

STATE OF ARIZONA

MAY 8 1995

DEPARTMENT OF INSURANCE DEPARTMENT OF INSURANCE

In the Matter of	)	Docket No. 8612
	)	
NORTHWESTERN NATIONAL LIFE	)	ORDER
INSURANCE COMPANY,	)	
NAIC No. 67105	)	
	)	
Petitioner.	)	
_____	)	

On April 7, 1995, a hearing took place in the above-referenced matter. Assistant Attorney General Peter H. Schelstraete appeared on behalf of the Arizona Department of Insurance ("Department"). S. David Childers and Kathy A. Steadman appeared on behalf of Petitioner Northwestern National Life Insurance Company ("Northwestern"), NAIC No. 67105.

Based upon the entire record, including all pleadings, motions, testimony, and exhibits, Administrative Law Judge Gregory Y. Harris prepared the following Findings of Fact, Conclusions of Law, and Order for consideration and approval by the Director of the Department (the "Director"). The Director adopts and enters the following Findings of Fact, Conclusions of Law and enters the following Order:

FINDINGS OF FACT

Question Presented

1. The question presented in this matter concerns whether Northwestern must offer a "basic health benefits plan" (a "Basic Plan") to qualified small employers. See A.R.S. §20-2301(3) (defining "basic health benefit plan"). In part, A.R.S. §20-2304(A) provides:

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2 Beginning July 1, 1994, as a condition of  
3 doing business in this state each accountable  
4 health plan issuing new health benefits plans  
5 shall offer a basic health benefit plan to  
6 qualified small employers.

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8 2. This statute requires Northwestern to offer a Basic  
9 Plan to qualified small employers if Northwestern issues a "new"  
10 Plan. Conversely, if Northwestern has not issued a "new" Plan,  
11 Northwestern has no obligation to offer a Basic Plan to qualified  
12 small employers.

13  
14 3. The resolution of this matter requires a  
15 consideration of the meaning of "new" as used in A.R.S.  
16 §20-2304(A).

#### 17 Jurisdiction

18 4. On November 30, 1993, the Department approved  
19 Northwestern's "Accountable Health Plan" application. A.R.S.  
20 §20-2303. See A.R.S. §20-2301(1) (defining "accountable health  
21 plan"). This approval authorized Northwestern to offer, issue or  
22 otherwise provide a health benefits plan (a "Plan"). See A.R.S.  
23 §20-2301(5) (defining "health benefits plan").

24 5. On November 7, 1994, the Department advised  
25 Northwestern of Northwestern's obligation to issue a Basic Plan  
26 (Exhibit 36).

27 6. On November 18, 1994, Northwestern filed a demand  
28 for hearing pursuant to A.R.S. §20-162. The Director issued  
notice of this hearing on December 19, 1994.

#### Background of S.B. 1109

7. In 1993, the Arizona Legislature enacted Senate  
Bill 1109 ("S.B. 1109"). This legislation, now codified in A.R.S.

1 §§20-2301 to 20-2352, contains comprehensive, remedial provisions  
2 affecting employer-provided health insurance plans.

3 8. In enacting S.B. 1109, the Legislature recognized  
4 that insurers generally did not offer small employers a Plan that  
5 provided health benefits comparable to the Plan offered to large  
6 employers. Through the enactment of S.B. 1109, the Legislature  
7 sought to ensure that insurers would offer comparable Plans to  
8 both large and small employers.

9 9. When the Legislature created S.B. 1109, it included  
10 a statement of its intent in the sessions law that explains the  
11 scope of the new laws:

12 The provisions of this act apply to health  
13 benefits plans that are offered, issued or  
renewed from and after December 31, 1993.

14 S.B. 1109 §4.

15 Description of Northwestern's Transactions as an  
16 Approved Accountable Health Plan

17 10. Northwestern transacts insurance in Arizona as an  
18 approved Accountable Health Plan. It sells life and disability  
19 insurance in Arizona, and currently issues a separate Plan to  
20 Arizona employers.

21 11. Although Northwestern has received approval to  
22 operate as an Accountable Health Plan, and has issued Plans after  
23 December 31, 1993, Northwestern has not offered a Basic Plan to  
24 qualified small employers.

25 12. Each Plan that Northwestern provides to these 13  
26 Arizona employers has a one year term. Each of the Plans provide  
27 in part that the Plan:

28 . . . is effective on the Effective Date. The  
first Policy Year ends on the Anniversary

1 Date. Policy Years are determined from the  
2 Policy Anniversary.

3 See e.g., Exhibit 37.

4 13. The terms of each Plan permit the employer and  
5 Northwestern to agree to continue the Plan from policy year to  
6 policy year. If the parties continue the Plan after the  
7 anniversary date, the parties may agree to changes to the premium,  
8 benefits, coverages, co-pay amounts, deductibles, maximum lifetime  
9 benefits. Thus, the material terms of a Plan may differ from one  
10 year to the next. Consequently, the benefits to which a covered  
11 employee may be contractually entitled to receive may change from  
12 one year to the next.

13 14. When the hearing took place, the anniversary dates  
14 for nine of the Plans had passed. Of these nine Plans, changes  
15 were made at the anniversary date to five of the Plans: ASM  
16 Lithography, Deerport Scottsdale Investment, Inc., Fennemore  
17 Craig, Hensley & Company, and Kitchell Corporation.

18 15. Changes after July 1, 1994 to the Plans provided to  
19 Fennemore Craig, Hensley & Company, and Kitchell Corporation  
20 effected the addition and reduction of benefits, changes in  
21 deductibles and other changes. Exhibits 7, 10, 17, 18, and 43.  
22 As shown by Exhibit 43, reproduced in part below, the Hensley &  
23 Company Plan had substantial changes made at its anniversary date  
24 (January 1, 1995):

1	COVERED SERVICES	COVERAGE AS OF 1/1/94	COVERAGE AS OF 1/1/95
2	Prescription Drug	Use of PCS	\$7 co-pay with PCS - all
3	Benefit	Co-Pay for generic drugs \$4.00	drugs that are covered by PCS or 60, 80, or 90%
4		Co-Pay for non-generic drugs \$10.00	
5	Non-network PPO	\$300 per individual	\$500 per individual
6	Deductible	\$500 per family	\$10,500 per family
7	Maximum Lifetime	Unlimited except for mental	\$2 million lifetime
8	Benefit	illness, alcohol and drugs	
9	Maximum Lifetime	\$50,000 lifetime	\$27,500 lifetime
10	Benefit for Mental		
11	Health/Chemical		
12	Dependency		
13	Hospice	90%, maximum \$7,500 lifetime	60, 80 or 90%* to maximum \$7,500
14	Home Health Care	100%	60, 80 or 90%* to maximum \$7,500
15	Well-Baby Care	80% in PPO Not covered out of PPO	100% after \$15 co-pay in network - EPO 80% in PPO Not covered out of PPO or EPO
16	Physician Office	80% in PPO	60, 80 or 90%*
17	Visit	60% non-PPO	
18	OP -- X-Ray and	80% in PPO	60, 80 or 90%*
19	Laboratory	70% non-PPO	

20 \*60, 80 or 90% benefit depends on whether services are received in EPO network or  
 21 non-network or in PPO network or non-network. EPO was added at 1/1/95 renewal.

22 PCS = Prescription Card Services  
 23 EPO = "Enhanced" Provider Organization  
 24 PPO = Preferred Provider Organization

25 Summary of the Parties' Positions

26 16. The Department contends that any Plan issued by  
 27 Northwestern after July 1, 1994, with terms, provisions or  
 28 benefits different from those in place before that date  
 constitutes the issuance of a new Plan. The Department urges that  
 because the Plans issued after July 1, 1994 to at least five

1 employer groups have changed, Northwestern has issued new Plans  
2 within the meaning of A.R.S. §20-2304(A). Therefore, the  
3 Department urges that Northwestern must offer a Basic Plan to  
4 small employers.

5 17. Northwestern contends that it has no obligation to  
6 offer a Basic Plan to qualified small employers because all 13  
7 employers have had a Plan issued by Northwestern before July 1,  
8 1994. Northwestern argues that the employers do not have a "new"  
9 Plan within the meaning of A.R.S. §20-2304(A) because Northwestern  
10 issued the Plans before July 1, 1994 and continued the Plans after  
11 July 1, 1994. Northwestern further argues that the continuation  
12 of the Plans during a subsequent contract year does not constitute  
13 the "issu[ance of] new health benefits plans" within the meaning  
14 of A.R.S. §20-2304(A).

#### 15 Discussion

16 18. The rules of statutory construction applicable to  
17 this matter require that "if a statute's language is clear and  
18 unambiguous, [the statute must be applied] without resorting to  
19 other methods of statutory interpretation." Hayes v. Continental  
20 Ins. Co., 178 Ariz. 264, 268, 872 P.2d 668, 672 (1994). However,  
21 "[w]here . . . the statute's language is subject to different  
22 interpretations, [consideration must be given to] other sources of  
23 legislative intent such as the statute's context, historical  
24 background, consequences, spirit and purpose." Lowing v. Allstate  
25 Ins. Co., 176 Ariz. 101, 104, 859 P.2d 724, 727 (1993).

26 19. In its reading of the statute, Northwestern argues  
27 that the question of whether a Plan is "new" turns only on the  
28 identity of the parties to the Plan and not on the changed

1 benefits, terms or conditions of the Plan. Significantly, the  
2 language of the statute does not focus upon the identify of the  
3 parties to the Plan. In contrast, the Department urges that  
4 whether a Plan is "new" requires consideration equally to both the  
5 identity of the parties to the Plan and to the benefits afforded  
6 under the Plan.

7 20. Because both of these constructions demonstrate  
8 "that the statute's text allow for more than one rational  
9 interpretation, . . . [doubt may be resolved] by resorting to  
10 statutory interpretation." Hayes, 178 Ariz. at 268, 872 P.2d at  
11 672. "[W]hen a statute's meaning is disputed, . . . it is  
12 important, though not always dispositive, to review the statute's  
13 legislative history to find, if possible, any shared legislative  
14 understanding of the relevant language." Id. at 269, 872 P.2d at  
15 673.

16 21. As previously noted, the enactment of S.B. 1109  
17 represented a comprehensive, remedial approach to ensure that  
18 insurers would offer comparable Plans to both large and small  
19 employers. The legislature enacted S.B. 1109 to require  
20 accountable health plans to offer Basic Plans to small employers  
21 to help defray the heavy social costs caused when insurers do not  
22 make comprehensive benefits available to the substantial number of  
23 Arizonans who work for small employers. As evidence of this  
24 intent, the legislature made the provisions of S.B. 1109,  
25 including the provisions of A.R.S. §20-2304(A), applicable "to  
26 health benefits plans that are offered, issued or renewed from and  
27 after December 31, 1993." S.B. 1109 §4.  
28

1                   22. The history underlying the enactment of S.B. 1109,  
2 of which A.R.S. §20-2304(A) is a part also supports the conclusion  
3 that the legislature intended to ensure that a broad selection of  
4 insurers would offer a Basic Plan from which small employers could  
5 choose to secure a health benefits plan for their employees. This  
6 history further supports the conclusion that the legislature  
7 intended to ensure that a wide selection of Basic Plans would be  
8 available to qualified small employers.

9                   23. The adoption of Northwestern's construction of  
10 A.R.S. §20-2304(A) would undermine the legislature's intent.  
11 Instead, a reading of A.R.S. §20-2304(A) that serves to satisfy  
12 the intentions of the legislature should be adopted. See Lowing  
13 v. Allstate Ins. Co., 176 Ariz. at 104, 859 P.2d at 727 (a  
14 remedial statute "should be liberally construed in order to  
15 effectuate its purpose.") Thus, as urged by the Department, for  
16 purposes of construing A.R.S. §20-2304(A), the question of whether  
17 a Plan is "new" requires consideration equally of both the  
18 identity of the parties to the Plan and to the benefits afforded  
19 under the Plan.

20                   24. Northwestern's construction of A.R.S. §20-2304(A)  
21 ignores the "applicability" clause of S.B. 1109. The language in  
22 this clause does not limit the scope of the enactment to health  
23 benefit plans sold to "new customers", but instead makes the  
24 provisions of the act applicable to Plans "that are offered,  
25 issued or renewed . . . ." S.B. 1109, §4. Northwestern's  
26 construction would frustrate the Legislature's intent by creating  
27 the possibility that an insurer operating as an "accountable  
28 health plan" that had issued health benefit plans before July 1,



1 1994, could continue to issue these Plans without shouldering the  
2 shared responsibility contemplated by the enactment of S.B. 1109.

3 25. Northwestern offered testimony from representatives  
4 of ASM Lithography and Fennemore Craig, both of which obtained a  
5 Plan written by Northwestern before July 1, 1994. The Plan  
6 written for ASM Lithography has a November 1 anniversary date.  
7 The Plan written for Fennemore Craig has a January 1 anniversary  
8 date. Both employers agreed to Northwestern's issuance of Plans  
9 to provide benefits for terms that began on the respective  
10 anniversary date that followed after July 1, 1994.

11 26. The representatives of ASM Lithography and  
12 Fennemore Craig testified about the rationale behind the purchase  
13 of a Plan for a term that began after July 1, 1994. Each raised  
14 similar concerns relating to incontestability periods, waiting  
15 periods for preexisting conditions. Each of these concerns  
16 focused on the implications of a determination that benefits  
17 provided for a term that began after July 1, 1994, constituted a  
18 new Plan within the meaning of A.R.S. §20-2304(A). Each testified  
19 that the contracts entered into with Northwestern provided  
20 incentives for a Plan to remain in force over time. For instance,  
21 if a Plan were determined to be a new Plan, each questioned  
22 whether the preexisting conditions clause and the incontestability  
23 period would begin again at the start of each term. With these  
24 concerns in mind, each testified that when the Plan for the term  
25 that began after July 1, 1994, each intended that the Plan be a  
26 renewed Plan and not be a new Plan.

27 27. The issues raised by the representatives of ASM  
28 Lithography and Fennemore Craig do not dictate a different result.

1 Consistent with the provisions of A.R.S. §20-1204, Northwestern's  
2 contract does not tie the period of contestability to the date on  
3 which the Plan was "new", but instead begins to run on "the  
4 effective date of the insured's coverage." The Plan documents  
5 also determine whether to exclude a preexisting condition from  
6 coverage based upon the date the insured began to receive benefits  
7 under the Plan. These contractual provisions thus will not be  
8 impacted by the legal determination of the definition of a "new  
9 health benefits plan" under A.R.S. §20-2304(A).

10 28. The changes made to the Plan issued to Hensley &  
11 Company which became effective on November 1, 1994 constitute  
12 changes to the terms and or benefits. In addition, as noted  
13 above, four other plans issued by Northwestern after July 1, 1994  
14 also included changes to the Plans previously provided by  
15 Northwestern. Thus, for purposes of A.R.S. §20-2304(A),  
16 Northwestern's issuance of these Plans constitutes the "issu[ance  
17 of] new health benefits plans." Therefore, consistent with the  
18 provisions of A.R.S. §20-2304(A), Northwestern must "offer a basic  
19 health benefit plan to qualified small employers."

#### 20 CONCLUSIONS OF LAW

21 1. Northwestern received notice of this proceeding as  
22 prescribed by A.R.S. §§20-163 and 41-1061.

23 2. The Director has jurisdiction over this matter  
24 pursuant to A.R.S. §20-142.

25 3. Northwestern has issued a new health benefits plan  
26 within the meaning of A.R.S. §20-2304(A).

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ORDER

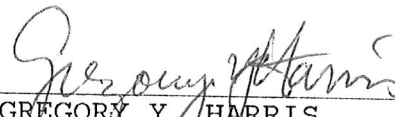
IT IS ORDERED:

Northwestern shall offer a Basic Plan to qualified small employers, as required by A.R.S. §20-2304(A).

EFFECTIVE this 8<sup>th</sup> day of May, 1995.



CHRIS HERSTAM  
Director of Insurance



GREGORY Y. HARRIS  
Chief Administrative Law Judge

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NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Administrative Law Division within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R4-14-114(B).

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. §20-166.

COPY of the foregoing mailed/delivered this 8<sup>th</sup> day of May, 1995, to:

Gay Ann Williams, Deputy Director  
Charles R. Cohen, Executive Assistant Director  
John Gagne, Manager, Investigations  
Mary Butterfield, Manager, Health Policy Division  
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