



Republic of the Philippines  
Department of Finance  
**INSURANCE COMMISSION**  
1071 United Nations Avenue  
Manila

Legal Opinion (LO) No.:	2022 - 01
Date:	08 February 2022

**ATTY. JEROME L. FLOJO**  
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Subject: **Benefits to Shareholders and their Dependents**

Dear **Atty. Flojo**:

This refers to your letter dated 02 September 2021 on behalf of your clients who intend to establish a new corporation ("the Corporation") to operate a hospital. Per your letter, in order to attract investors/subscribers, persons who will subscribe to the Corporation's capital stock, as well as their spouses and dependents, will be entitled to the following benefits:

<b>Stockholder and Spouse</b>	<b>Dependents</b>
<ul style="list-style-type: none"><li>• Free board and lodging up to Private Room;</li><li>• Fifty percent (50%) Discount on the following:<ul style="list-style-type: none"><li>○ Professional fee: House Case Rate</li><li>○ Professional fee: Out-Patient Consultations</li></ul></li><li>• Fifty percent (50%) discount on:<ul style="list-style-type: none"><li>○ Procedures: X-Ray, Laboratory, Rehabilitation</li><li>○ Cardio-Pulmonary Services</li></ul></li><li>• No OR and DR fees</li><li>• Pharmacy, CSR, and OR materials, discount computed as – Cost of Acquisition plus 20%</li></ul>	<ul style="list-style-type: none"><li>• Free board and lodging up to Private Room</li><li>• Twenty-five percent (25%) Discount on the following:<ul style="list-style-type: none"><li>○ Professional fee: House Case Rate</li><li>○ Professional fee: Out-Patient Consultations</li></ul></li><li>• Twenty-five percent (25%) discount on<ul style="list-style-type: none"><li>○ Procedures: X-Ray, Laboratory, Rehabilitation</li><li>○ Cardio-Pulmonary Services</li></ul></li><li>• No Operating and Delivery Room fees</li></ul>

<ul style="list-style-type: none"> <li>• Dental Services <ul style="list-style-type: none"> <li>○ Free dental consultation</li> <li>○ Thirty percent (30%) discount on Restorative/Preventive Periodontics, Endodontics, Surgery and Bleaching</li> <li>○ Ten percent (10%) less on Prosthodontics procedures</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Pharmacy, CSR and OR materials, discount computed as – Cost of Acquisition plus 20%</li> </ul>
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Relative to the foregoing, you seek the Insurance Commission's legal opinion with respect to the following:

- (a) Whether the entitlement to the benefits by the shareholders and their dependents can be deemed as pre-need plans;
- (b) Whether the Corporation to be established would, in providing the abovementioned benefits to their respective shareholders, be deemed to be performing activities of a Health Maintenance Organization; and
- (c) If the answer to either of the queries above is in the affirmative, what would be the requirements, if any?

Upon careful consideration of the matters raised in your request, hereunder are the Insurance Commission's findings:

***1. The entitlement to the benefits by shareholders and their dependents cannot be deemed as pre-need plans***

As to your first query, the entitlement to the abovementioned benefits by the shareholders and their dependents cannot be deemed as pre-need plans.

Section 4(b) of Republic Act No. 9829 or the Pre-Need Code defines "pre-need plans" as follows:

"(b) "Pre-need plans" are contracts, agreements, deeds or plans for the benefit of the planholders which provide for the performance of future service/s, payment of monetary considerations or delivery of other benefits at the time of actual need or agreed maturity date, as specified therein, in exchange for cash or installment amounts with or without interest or insurance coverage and includes life, pension, education, interment and other plans, instruments, contracts or deeds as may in the future be determined by the Commission." (Emphasis supplied.)



It is noted that the benefits set forth in your request do not constitute the performance of future service/s, payment of monetary considerations or delivery of other benefits at the time of actual need or agreed maturity date in exchange for cash or installment amounts. Instead, such benefits are merely additional incentives to which subscribers to the Corporation's capital stock, as well as their dependents, are entitled to. It must be emphasized that in this particular case, whatever amount is paid by the shareholders is intended as payment for shares in the Corporation and not as payment for the performance of future services or delivery of the subject benefits at the time of actual need or agreed maturity date.

Hence, the entitlement to the subject benefits by the shareholders and their dependents cannot be deemed as availment of pre-need plans.

***II. Providing the subject benefits  
does not constitute engaging in  
HMO business***


As to your second query, the Commission finds that the Corporation to be established, in providing the subject benefits to its shareholders, cannot be deemed to be performing activities of a Health Maintenance Organization (HMO).

Executive Order No. 192, series of 2015 defines a health maintenance organization as "**a juridical entity legally organized to provide or arrange for the provision of pre-agreed or designated health care services to its enrolled members for a fixed pre-paid fee for a specified period of time**". Per your submission, the intended primary purpose for the establishment of the Corporation is to operate a hospital. This is distinct from the provision of pre-agreed or designated health care services to enrolled members for a fixed pre-paid fee for a specified period of time. Please note that in the case of HMOs, the health care services are rendered to the members through the use of a selected network of health care providers, as opposed to the provision of free and/or discounted health care services to the shareholders of a corporation operating a hospital.

Further, the subject benefits are merely additional incentives given to shareholders and are not in the nature of health care services provided to enrolled members for a fixed pre-paid fee. As discussed in the previous section, the amount paid by the shareholders is intended as payment for shares in the Corporation and not as payment for the subject benefits.

Please note that the above opinion rendered by this Commission is based solely on the particular facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used, in any manner, in the nature of a standing rule binding upon the Commission in other cases whether for similar or dissimilar circumstances.

For your information and guidance.

Very truly yours,  


**DENNIS B. FUNA**  
Insurance Commissioner

