

1979 WL 43579 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
September 10, 1979

***1 RE: PCF Membership Surcharges**

Honorable John W. Lindsay
Chief Insurance Commissioner
Department of Insurance
2711 Middleburg Drive
Columbia, SC 29204

Dear Mr. Lindsay:

You have requested the opinion of this Office regarding the amount of surcharge which may be charged by the South Carolina Patient Compensation Fund of those health care providers whose insurance coverage is on an occurrence basis and whose premiums include a portion which is subject to refund to the insured.

Section 38-59-150, South Carolina Code of Laws, 1976, as amended, provides that each participating provider covered under the Fund 'shall pay a surcharge of 100 percent of his basic professional liability premium . . . provided that such premiums be on an occurrence type policy . . .', the percentage of the surcharge decreasing annually at a fixed rate. You have indicated in your letter that certain professional liability insurance companies' premiums include a portion which is subject to refund to the insured, contingent upon the profitability of all of the doctors insured by that company. You wish to know whether that portion of the premium should be deducted from the amount to be considered a 'premium' for the purpose of establishing the amount of the surcharge to be assessed by the Patients' Compensation Fund.

The essential question, therefore, hinges on the resolution of the issue of the definition of the term 'premium' in insurance law. Ordinarily, a premium is that amount of consideration which is paid by the insured for insurance coverage. [Allstate Insurance Company vs. State Board of Equalization](#), 169 C.A.2d 165, 336 P.2d 961. Since the entire amount which is paid by the insured at the commencement of his coverage is subject to repension by the insurer, the entire amount must be considered to be a premium, regardless of the existence of the possibility of a rebate. See, [New York Life Insurance Co. vs. Wright](#), 31 Ga. App. 713, 122 S.E. 706.

Therefore, it is the opinion of this Office that surcharges provided by § 38-59-150 are on the total amount of premium payments to the insurer, including those portions which are subject to rebate dependent on the experience of the insurer for the previous year.

I trust this has been of some assistance to you.
Very truly yours,

Katherine W. Hill
Assistant Attorney General

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