

INTERPRETIVE LETTER 91-20 (AUGUST 28, 1991)

Loans collateralized by hospital or nursing home's assignment of rights to Medicaid payments qualify for exceptions and exemptions from lending limits under Section 34 and may also qualify under Section 35.

I am in receipt of your letter to me regarding the assignment of Medicaid payments. In the letter you asked whether the assignment of accounts receivable, by a hospital or a nursing home, of Medicaid payments from the federal government or the State of Illinois to an Illinois state bank would be subject to the lending limitations of the Illinois Banking Act ("Act") (Ill. Rev. Stat. 1989, ch. 17, par. 301 et seq.).

As I understand the facts, hospitals and nursing homes treating Medicaid patients forward invoices on a regular basis to the federal government or the State of Illinois for payment on services provided. The respective governments receive the invoices on or around the 14th of each month. The respective governments have a period of time to object to the payment of invoices based upon the type or quality of services billed, which time usually expires on the 25th of each month. Thereafter, the respective governments are obligated to pay in full all invoices to which no objections were made. You expressed an interest in establishing relationships between Illinois state banks and various hospitals and nursing homes treating Medicaid patients by which government obligations to make Medicaid payments could be assigned to the banks in exchange for money advances. Before you did that, you wanted to know the position of the Commissioner of Banks and Trust Companies ("Commissioner's Office") regarding the impact of the lending limits of the Act upon the assignments.

The fact pattern you described to me would involve a loan to a hospital or a nursing home secured by obligations of the federal government or the State of Illinois to pay medical bills under the Medicaid program. Section 34(1) (Ill. Rev. Stat. 1989, ch. 17, par. 342(1)) provides an exception to the general lending and investment limitations of Sections 32 and 33 of the Act, while Sections 35(2) and 35(5) (Ill. Rev. Stat. 1989, ch. 17, par. 343(2) and 343(5)) provide exemptions from those lending and investment limitations as well as the limitations of Section 34 with respect to loans to a person secured by federal or state government obligations. Copies of Sections 32, 33, 34 and 35 are enclosed for your review.

The Commissioner's Office takes the position that a state bank may, pursuant to Section 34(1) of the Act, extend loans to a nursing home or to a hospital of up to at least fifty percent (50%) of the bank's unimpaired capital and surplus to the extent that the loans are secured by a like amount of assignments of the rights of the hospital or the nursing home to receive Medicaid payments from the federal government, the State of Illinois or any of their respective agencies.

The Commissioner's Office also takes the position that, pursuant to Sections 35(2) and (5) of the Act, the assignment of the rights of a hospital or a nursing home--to receive Medicaid payments from the federal government, the State of Illinois or any of their

respective agencies--to Illinois state banks would be exempt from the lending and investment limitations of the Act as long as the transactions assigned constituted one of the following:

- (1) Loans to a hospital or a nursing home to the extent the loans are secured by not less than a like amount of obligations fully guaranteed as to both principal and interest by the United States;
- (2) Loans to a hospital or a nursing home to the extent the loans are secured or covered by guaranty or by commitment or agreement to take over or purchase made by the United States or any department, bureau, board, commission or establishment of the United States including any corporation wholly owned, directly or indirectly, by the United States; and
- (3) Loans to a hospital or a nursing home to the extent that the loans are secured by not less than the same amount of general obligations of the State of Illinois.

In each particular case, you should consult your legal counsel as to whether the exemptions of Sections 35(2) and (5) would apply.

[NOTE: The United States government must acknowledge that a claim is an obligation of the United States in accordance with Federal Assignment of Claims Act, 31 U.S.C. 3727, in order for the claim to qualify for an exemption as an obligation of the federal government.]