



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 11, 1975

ATTORNEY GENERAL OPINION NO. 75-428

Mr. Lawrence O. Barry
Special Attorney
Kansas Insurance Department
State Office Building
Topeka, Kansas 66612

RE: The Applicability of The Kansas Life and Health Insurance Guaranty Association Act, K.S.A. 40-3001, et seq., to Kansas Blue Cross-Blue Shield, Health Maintenance Organizations, or Fraternal Benefit Associations.

Synopsis: The Kansas Life and Health Insurance Guaranty Association Act does not apply to Blue Cross-Blue Shield or Health Maintenance Organization policies or contracts or to policies or contracts issued by fraternal benefit associations which do not meet the qualifications of an insurance company as defined by the Kansas Supreme Court and those which are specified in K.S.A. 40-202.

* * *

Dear Mr. Barry:

You request our opinion whether the Kansas Life and Health Insurance Guaranty Association Act, K.S.A. 40-3001, et seq., is applicable to Kansas Blue Cross-Blue Shield, Health Maintenance Organizations, or Fraternal Benefit Associations.

The application or non-application of the Kansas Life and Health Insurance Guaranty Association Act to various policies and contracts is set out in K.S.A. 40-3003, which provides:

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"(a) This act shall apply to direct life insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this state at any time.

(b) This act shall not apply to:

(1) Any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder;

(2) Any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(3) Any such policy or contract issued by persons transacting business pursuant to the provisions of K.S.A. 1971 Supp. 40-202."

In light of the language of K.S.A. 40-3003 in order for a policy or contract to qualify for inclusion under the Kansas Life and Health Insurance Guaranty Association Act, it must meet two requirements. First, as pointed out in K.S.A. 40-3003(a) it must be issued by a person authorized to transact insurance in this state. Second, it must not be of the type noted in K.S.A. 40-3003(b).

Blue Cross-Blue Shield contracts fail to qualify under this Act because Blue Cross-Blue Shield, does not transact insurance. Michigan Hospital Service v. Sharpe, 339 Mich. 357, 63 N.W.2d 638, 43 A.L.R.2d 1167 (1954). Blue Cross-Blue Shield plans are treated in 43 Am. Jur. 2d, Insurance, §11 (1969) in the following manner:

"Generally speaking, a corporation, whether or not organized for profit, the object of which is to provide the members of a group with medical services and hospitalization is considered not engaged in the insurance business and hence not subject to insurance laws."

An opinion was issued by Attorney General Vern Miller in December, 1971, stating that Health Maintenance Organizations were not in the insurance business citing Jordan v. Group Health

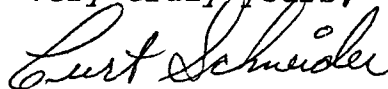
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Association, 107 F.2d 239 (D.C. Cir. 1939) and California Physicians Service v. Garrison, 28 Cal. 2d 771, 172 P.2d 4, 167 A.L.R. 306, (1946), as authority for that statement. That opinion is still valid today and in light of it we say that policies or contracts issued by Health Maintenance Organizations fail to qualify under this Act.

There can be no clear cut all encompassing rule set down as to whether or not fraternal benefit associations qualify under this act. Each organization must be judged on its own merits in light of the provisions of K.S.A. 40-202, which specifically excepts certain organizations from the provisions of the Insurance Code, K.S.A. 40-3008(b) above, and decisions of the Kansas Supreme Court defining what constitutes insurance such as State ex rel. v. Vigilant Insurance Company of Nimrod, 30 Kan. 585, 2P. 840, (1883).

It is accordingly my opinion that the Kansas Life and Health Insurance Guaranty Association Act does not apply to Blue Cross-Blue Shield or Health Maintenance Organization policies or contracts or to policies or contracts issued by fraternal benefit associations which do not meet the qualifications of an insurance company as defined by the Kansas Supreme Court and those which are specified in K.S.A. 40-202.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/DRH/cgm