



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 28, 1977

ATTORNEY GENERAL OPINION NO. 77- 142

Mr. Robert M. Corbett, Attorney
Department of Health and Environment
Building 740 - Forbes Air Force Base
Topeka, Kansas 66620

Re: Public Health--Health Facilities--Certificates of need

Synopsis: Under certain circumstances an existing adult care home which proposes to expand its bed capacity, without engaging in additional building construction, must submit an application for certificate of need to a health systems agency.

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Dear Mr. Corbett:

You have inquired as to whether or not an adult care home which intends to increase its bed capacity, without engaging in additional building construction, is required to apply for a certificate of need pursuant to K.S.A. 1976 Supp. 65-4805.

As you are aware, an earlier opinion issued by our office (No. 77-4, dated January 5, 1977) was devoted in part to an analysis of Kansas and federal laws which have prompted the formation of various Kansas health systems agencies (HSA) which are charged with the responsibility of reviewing certificates of need submitted by certain health facilities. In that opinion I noted that K.S.A. 1976 Supp. 65-4807 required that a HSA must conduct review of applications of certificates of need "in accordance with procedures established pursuant to section 1532 of public law 93-461 (42 U.S.C. 300n-1)." An analysis of this federal statute, which has been incorporated by reference by the Kansas legislature, reveals that each HSA "shall follow procedures, and apply criteria, developed and published by the agency [HSA] in accordance with regulations of the Secretary [of Health,

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Education and Welfare] . . ." 42 U.S.C. 300n-1(a). The regulations pertaining to review criteria (42 C.F.R. 122.301 et seq.) have been promulgated and are currently found at 42 Fed. Reg. 4024 (1977). Among the provisions that have been approved is 42 C.F.R. 122.304 which requires that a HSA must review all "new institutional health services" which are proposed for development within the geographical area which is administered by the HSA. 42 C.F.R. 122.304(a)(3) defines a "new institutional health service" as:

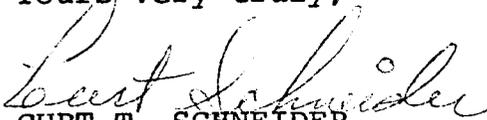
"A change in the bed capacity of a health care facility or health maintenance organization which increases the total number of beds. . . by more than forty beds or more than twenty-five percent of the total bed capacity as defined by the State, whichever is less, over a two-year period."

The term health care facility is defined in K.S.A. 1976 Supp. 65-4801(b) so as to include adult care homes as they are defined under state law (K.S.A. 1976 Supp. 39-923).

Therefore, if an existing health care facility proposes to increase its bed capacity to the limits set forth in 42 C.F.R. 122.304(a)(3), it would appear that this proposal would have to be reviewed by an appropriate HSA. While this requirement may be regarded as a strained interpretation of K.S.A. 1976 Supp. 65-4805(a)(2), one must bear in mind the language of K.S.A. 1976 Supp. 65-4807 which requires these state organizations to follow guidelines established by the federal government.

It is therefore my opinion that under certain circumstances an existing health care facility which proposes to expand its bed capacity must submit an application for a certificate of need to an appropriate HSA.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

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