



STATE OF KANSAS

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ATTORNEY GENERAL

July 6, 1981

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ATTORNEY GENERAL OPINION NO. 81- 151

Mr. Paul M. Buchanan
Assistant County Counselor
County Courthouse
Suite 315
Wichita, Kansas 67203

Re: Insurance -- Health Care Provider Insurance --
Inactive Health Care Providers

Synopsis: Trustees of the Sedgwick County hospital, which has ceased to render professional services, qualify under the Health Care Provider Insurance Availability Act as "inactive health care providers." We advise further that such protection is extended only to claims arising from the rendering or failure to render professional services. Claims arising from injuries not the result of the delivery or failure to deliver professional health care services are matters to be determined under the Kansas Tort Claims Act, K.S.A. 1980 Supp. 75-6101 et seq. Cited herein: K.S.A. 19-1860, K.S.A. 1980 Supp. 40-3401, 40-3402, 40-3403, K.S.A. 65-425, K.S.A. 1980 Supp. 75-6101.

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Dear Mr. Buchanan:

On behalf of the Sedgwick County Counselor you request the opinion of the Attorney General regarding the applicability of the Kansas Health Care Provider Insurance Availability Act, K.S.A. 1980 Supp. 40-3401 et seq., to former trustees of a Sedgwick County hospital. You advise that the county maintained a county hospital pursuant to K.S.A. 19-1860 et seq. This hospital ceased rendering professional services on

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December 1, 1979, and the "directors" (trustees) have tendered their resignations. You desire to know if such hospital is an "inactive health care provider" as that term is defined in K.S.A. 1980 Supp. 40-3401(g) and whether the trustees are entitled to the coverage provided in this Act.

K.S.A. 1980 Supp. 40-3401(f) defines "health care provider" to include "a medical care facility licensed by the department of health and environment." A subsequent paragraph of this definition section [40-3401(m)] declares that

"'medical care facility' means the same when used in the health care provider insurance availability act as the meaning ascribed to that term in K.S.A. 65-425, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care provider insurance availability act, also includes any director, trustee, officer or administrator of a medical care facility."

K.S.A. 65-425 defines medical care facility as "a hospital, ambulatory surgical center or recuperation center."

Based on our knowledge of the Sedgwick County hospital to which you refer, we recognize that it meets these definitions of a medical care facility, and we presume that it was indeed licensed. Because you are interested in the application of this Act to the trustees of the facility, we note K.S.A. 40-3401(m) quoted above, which specifically includes "any director, trustee, officer or administrator of a medical care facility." Hence, we would conclude that trustees of the Sedgwick County hospital were health care providers within the terms of this Act.

An inactive health care provider is defined in paragraph (g) of K.S.A. 1980 Supp. 40-3401 as

"a person or other entity who purchased basic coverage or qualified as a self-insurer on or subsequent to the effective date of this act but who, at the time a claim is made for personal injury or death arising out of the rendering of or the failure to render professional services by such health care provider, does not have basic coverage or self-insurance in effect solely because such person is no longer engaged in rendering professional service as a health care provider."

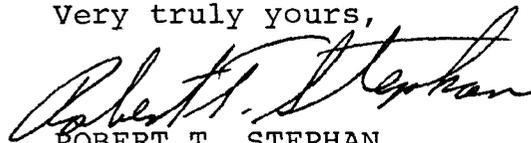
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Assuming from information you have provided that such trustees were protected by a basic insurance coverage or the facility qualified as a self-insurer on or subsequent to July 1, 1976 (the effective date of 40-3401), and that such facility and its trustees are no longer engaged in the rendering of professional services, we would conclude that the trustees would qualify as inactive health care providers within the meaning of the Health Care Provider Insurance Availability Act.

Finally, we note for your information that such persons, as inactive health care providers, are entitled to the indemnities provided by K.S.A. 1980 Supp. 40-3403(b)(3). That section requires that the health care stabilization fund shall be liable to pay "any amount due from a judgment or settlement against a resident inactive health care provider for any such injury or death."

Therefore, it is our opinion that trustees of the Sedgwick County hospital, which has ceased to render professional services, qualify under the Health Care Provider Insurance Availability Act as "inactive health care providers." We advise further that such protection is extended only to claims arising from the rendering or failure to render professional services. See K.S.A. 1980 Supp. 40-3402. Claims arising from injuries not the result of the delivery or failure to deliver professional health care services are matters to be determined under the Kansas Tort Claims Act, K.S.A. 1980 Supp. 75-6101 et seq.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle