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ATTORNEY GENERAL OPINION NO. 87- 58

The Honorable James L. Francisco  
State Senator, Twenty-Sixth District  
Capitol Building, Room 136-N  
Topeka, Kansas 66612

The Honorable Vernon L. Williams  
State Representative, Ninety-First District  
Capitol Building, Room 431-N  
Topeka, Kansas 66612

Re: Insurance -- General Provisions - Insurance  
Coverage for Services Rendered in Treatment of  
Alcoholism, Drug Abuse and Nervous or Mental  
Conditions

Synopsis: Except as specifically provided by K.S.A. 40-2,105,  
an insurance policy may not contain different  
benefit limits for inpatient treatment of  
alcoholism, drug abuse, and nervous or mental  
conditions than those limits provided for other  
medical conditions. Cited herein: K.S.A.  
40-2,105; L. 1986, ch. 174.

\* \* \*

Dear Senator Francisco and Representative Williams:

As Senator for the Twenty-Sixth District and Representative  
for the Ninety-First District, respectively, you request our  
opinion regarding insurance. Specifically, you inquire about  
1986 House Bill No. 2737 (L. 1986, ch. 174), which amended  
K.S.A. 40-2,105. The Kansas Insurance Department has taken  
the position that "[i]n-patient benefits for treatment of  
nervous or mental conditions, alcoholism or drug abuse must be

provided at the same level they are provided for a medical condition. For example, if there are no copayments applicable to a medical in-patient claim no copayments may be applied to claims for the conditions specified in House Bill No. 2737." Kansas Insurance Department Bulletin 1986-10 (Addendum). You question whether this interpretation of 1986 House Bill No. 2737 (K.S.A. 40-2,105) is consistent with its provisions.

K.S.A. 40-2,105 states in part:

"(a) On or after the effective date of this act, every insurer which issues any individual or group policy of accident and sickness insurance providing medical, surgical or hospital expense coverage for other than specific diseases or accidents only and which provides for reimbursement or indemnity for services rendered to a person covered by such policy in a medical care facility, must provide for reimbursement or indemnity under such individual policy or under such group policy, except as provided in subsection (d), which shall be limited to not less than 30 days per year when such person is confined [inpatient] for treatment of alcoholism, drug abuse or nervous or mental conditions in a medical care facility . . . . Such individual-policy or such group policy shall also provide for reimbursement or indemnity, except as provided in subsection (d), of the costs of treatment of such person for alcoholism, drug abuse and nervous or mental conditions, limited to not less than 100% of the first \$100, 80% of the next \$100 and 50% of the next \$1,640 in any year and limited to not less than \$7,500 in such person's lifetime, in the facilities enumerated when confinement is not necessary [out-patient] for the treatment or by a physician licensed or psychologist licensed to practice under the laws of the state of Kansas.

. . . .

"(d) There shall be no coverage under the provisions of this section for any assessment against any person required by a diversion agreement or by order of a court to attend an alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto . . . ."  
(Emphasis added).

Noting the difference in treatment of in-patient benefits, as opposed to out-patient benefits, the Insurance Department argues that "[i]f [the legislature] would have intended K.S.A. 40-2,105 to require only minimum benefits for in-patient coverage, surely they would have treated in-patient coverages in a similar fashion in the statute as they did out-patient coverage by setting forth minimum coverage levels that they deemed reasonable." Letter from Commissioner Bell and Pam Sjöholm, Chief Attorney of the Insurance Department, to Senator Francisco, December 10, 1986. The argument is that since the Legislature imposed a 30-day minimum benefit for reimbursement of in-patient treatment of alcoholism, drug abuse and nervous or mental conditions instead of minimum dollar limitation as with out-patient treatment, the legislative intent was to allow no further limits on in-patient benefits other than those stated in the applicable policy for other medical conditions.

It is our opinion that this is a reasonable interpretation of K.S.A. 40-2,105. If the legislature had wanted to give 100% reimbursement at least 30 days annually for in-patient alcoholism, drug abuse and nervous or mental condition treatment, it could easily have done so. Conversely, had the legislature wished to impose benefit limits on these types of coverage in addition to the 30 day minimum limit, it could easily have done so. In that the legislature did not specify 100% coverage or additional benefit limits, it is reasonable to assume that in-patient treatment of alcoholism, drug abuse and nervous or mental conditions is to be given the same coverage as in-patient treatment of other medical conditions. If benefit limits were allowed for in-patient treatment of alcoholism, drug abuse and nervous or mental conditions, insurers could conceivably circumvent the provisions of K.S.A. 40-2,105 by setting such limits at a nominal amount.

Finally, K.S.A. 40-2404(7)(b) provides as follows:

"The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

. . . . .

"(7) Unfair discrimination

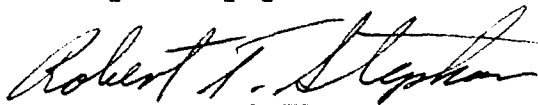
. . . . .

"(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged by any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever."

This language has been interpreted by the Department of Insurance to preclude discrimination amongst illnesses, a policy adhered to by the Department even prior to the passage of the 1986 amendment to K.S.A. 40-2,105.

In conclusion, except as specifically provided by K.S.A. 40-2,105, an insurance policy may not set different benefit limits for in-patient treatment of alcoholism, drug abuse, and nervous or mental conditions than those limits provided for other medical conditions.

Very truly yours,



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