



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 92- 4

The Honorable Arthur W. Douville
State Representative, Twentieth District
9600 Woodson
Overland Park, Kansas 66207-2844

Re: Insurance--General Provisions--Insurance Coverage
to Include Reimbursement or Indemnity for Services
Performed by Optometrist, Dentist or Podiatrist

Synopsis: An insurance plan covering a service that can be
provided by two different licensed professionals
cannot categorically deny reimbursement to one
without violating K.S.A. 40-2,100 when (1) the
service provided is covered by the contract; and
(2) the service provided is within the lawful scope
of practice under the healing arts act; and (3) the
service was provided by a podiatrist, optometrist
or dentist within the lawful scope of his/her
license. Cited herein: K.S.A. 40-231; 40-2,100;
65-2001.

* * *

Dear Representative Douville:

As representative of the twentieth district you inquire
whether an insurer's contract, plan or agreement violates
K.S.A. 40-2,100 by categorically excluding doctors of podiatry
(podiatrists) or by subjecting them to a maximum reimbursement
annually. You indicate the questions arise under the
following conditions:

1. When an insurer enters into a contract, plan or agreement with a preferred provider organization (PPO) for the reimbursement or indemnification of medical or health expenses for services which fall within the lawful scope of practice of doctors of podiatry;
2. when the service that podiatrists provide is covered by the plan that the PPO has contracted to indemnify on behalf of the insurer; and
3. when no maximum reimbursement annually is applied to doctors of medicine or doctors of osteopathy.

The issue presented by the first part of your question is whether an insurance plan covering a service that can be provided by two different licensed professionals can categorically deny reimbursement to one.

K.S.A. 40-2,100 is a "mandated-provider" statute that effectively mandates reimbursement for any covered service to be made to any licensed practitioner acting within the lawful scope of his license under the healing arts act, K.S.A. 65-2801 et seq. See Blue Cross and Blue Shield of Kansas City v. Bell, 798 F.2d 1331 (10th Cir. 1986).

The statutes states:

"Notwithstanding any provision of any individual, group or blanket policy of accident and sickness, medical or surgical expense insurance coverage or any provision of a policy, contract, plan or agreement for medical service, issued on or after the effective date of this act, whenever such policy, contract, plan or agreement provides for reimbursement or indemnity for any service which is within the lawful scope of practice of any practitioner licensed under the healing arts act of this state, reimbursement or indemnification under such policy contract, plan or agreement shall not be denied when such services are performed by an optometrist, dentist or podiatrist acting within the lawful scope of their license." (Emphasis added).

The interpretation of a statute is a question of law and it is the court's function to interpret the statute to give it the intended effect. Unified School District No. 279 v. Sec'y of the Kansas Department of Human Resources, 247 Kan. 519, 524 (1990). The fundamental rule of statutory construction is that the purpose and intent governs when that intent can be ascertained from the statute. Where the language of a statute is plain and unambiguous and appropriate to an obvious purpose, there is no room for judicial construction or interpretation and the court must give effect to the intention of the legislature as expressed. Johnson v. McArthur, 226 Kan. 128 (1979). With this guidance, we look to the language of the statute.

The act requires any individual, group or blanket policy of accident and sickness, medical or surgical or any policy, contract, plan or agreement for medical service must reimburse optometrists, dentists or podiatrists. When:

1. The service provided is covered by the policy;
2. the service provided is within the lawful scope of practice under the healing arts act; and when
3. the service provided by an optometrist, dentist or podiatrist is within the scope of his/her license. When all these requirements are met, the statute requires that a podiatrist, optometrist or dentist must be reimbursed for his or her service even though another licensed professional could have provided the same service.

The statute in question does not require that PPO's include doctors of podiatry as recognized health care providers. Consequently, the act is not violated by their exclusion per se. However, if a service that is covered by the contract can be provided by a podiatrist, the act requires that the covered service be reimbursed or indemnified if the service could have been provided by any practitioner licensed under the healing arts act. So in short, doctors of podiatry cannot be denied reimbursement if their services are covered by a plan and if what they do is within their lawful practice.

In addition to not requiring any particular provider, the statute does not require that any particular service (such as that provided by an optometrist, podiatrist or dentist) be included in any policy. The statute merely states that when a policy covers a service that the service will be reimbursed or indemnified regardless of what person renders the service as

long as it is done within the lawful scope of their license. For this reason this type of mandated provider laws are often called "freedom of choice laws". Blue Cross and Blue Shield of Kansas City v. Bell, 798 F.2d at 1333. Clearly the intent of this type of legislation is to allow the benefit of a choice of practitioner. In our judgment the exclusion of podiatrists violates the statute if the service that podiatrists provide is covered by the plan that the PPO has contracted to indemnify on behalf of the insurer and the exclusion precludes reimbursement for a service that could have been provided by a practitioner under the healing arts act.

The second part of your question is whether K.S.A. 40-2,100 is violated when podiatrists are subjected to a maximum reimbursement annually and other doctors (doctors of medicine or osteopathy) are not. In our judgment the statute in question does not address the amount of reimbursement. We note however that K.S.A. 40-231(b)(3) specifically authorizes insurance companies to negotiate and enter into contracts for alternative rates of payment with health care providers and other parties.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Guen Easley
Assistant Attorney General