



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 21, 1977

ATTORNEY GENERAL OPINION NO. 77-394

Mr. Ron Todd
Assistant Commissioner
Kansas Insurance Department
1st Floor - State Office Building
Topeka, Kansas 66612

Re: Insurance--Health Care Provider Insurance Availability
Act--Health Care Provider

Synopsis: The term "health care provider," as found at K.S.A. 1976 Supp. 40-3401(f), and as amended by 1977 Senate Bill 295, includes both comprehensive and community mental health centers which are licensed by the Secretary of Social and Rehabilitation Services.

* * *

Dear Mr. Todd:

The 1977 legislature amended the Health Care Provider Insurance Availability Act, K.S.A. 1976 Supp. 40-3401 *et seq.* to include as a "health care provider" thereunder a "mental health center or mental health clinic" which is licensed by the Secretary of Social and Rehabilitation Services. You inquire concerning the eligibility of certain institutions to participate in the Act under the amended definition.

K.S.A. 1976 Supp. 75-3307b vests in the Secretary of Social and Rehabilitation Services authority to license private hospitals for the care and treatment of mentally ill persons, community mental health centers, and facilities for the mentally retarded and serving other handicapped persons. The community mental health centers which are authorized to be licensed under this act are presumptively those community mental health centers which are authorized by K.S.A. 19-4001 *et seq.* to be created by boards of county commissioners.

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A further question arises concerning the Menninger Foundation, which holds a license dated September 14, 1977, issued by Secretary Harder, authorizing it to conduct a facility designated as a "Comprehensive Mental Health Center for Adults and Children." It is unclear to us under what specific authority this license is issued. So far as we are advised, and from a review of correspondence between your department and Secretary Harder and Dr. Williams of his department, K.S.A. 1976 Supp. 75-3307b constitutes the specific and sole statutory authority for licensure of mental health facilities by the Secretary. That authority extends only to private hospitals and community mental health centers. The phrase "comprehensive mental health center" does not appear in this licensing authority.

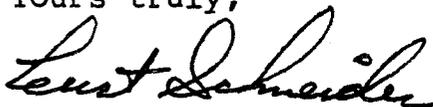
However, in the 1977 amendment, the legislature was not so discriminating in its terminology, drawing no distinction between community and comprehensive mental health centers. So far as we can determine, the distinction between the two terms is merely descriptive, *i.e.*, the latter offers a broader range of services than the former, except, of course, that community mental health center has specific legally descriptive meaning in Kansas, referring to those centers organized pursuant to K.S.A. 19-4001 *et seq.* Moreover, the two terms appear not to be mutually exclusive. Attachment III, attached to the letter of June 22, 1977, from Dr. Harder to Commissioner Bell, identifies a North Comprehensive Community Mental Health Center at Wichita, Kansas, which appears to be both a community and a comprehensive health center. As indicated above, 1977 Senate Bill No. 295, amending the definition of "health care provider," applies to a "mental health center or mental health clinic" which is licensed by the Secretary. The language does not distinguish between comprehensive and community mental health centers, and on its face, does not exclude a comprehensive mental health center from the definition, so long as the center holds a license as a mental health center from the Secretary of Social and Rehabilitation Services. The Menninger Foundation holds such a license, and constitutes a "health care provider" under the Health Care Provider Insurance Availability Act, as amended, in my opinion.

The question remains concerning two other institutions, Meadow Lark Homestead, Inc., and Mid-Continent Psychiatric Hospital. The former is licensed, according to your letter, as a community rehabilitation center for mentally ill persons, and the latter is licensed as a psychiatric hospital with day treatment and outpatient services. Neither is licensed as a mental health center, either comprehensive or community, and hence neither constitutes a "health care provider" under the amended act, in my judgment.

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If further questions remain concerning this matter, please do not hesitate to call upon us.

Yours truly,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in dark ink and is positioned above the typed name.

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj