



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 13, 1980

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

ATTORNEY GENERAL OPINION NO. 80-103

The Honorable Michael Crow
State Representative, Forty-First District
273-W, State Capitol
Topeka, Kansas 66612

The Honorable Ambrose Dempsey
State Representative, Forty-Second District
110-N, State Capitol
Topeka, Kansas 66612

Re: Counties and County Officers--Mental Health Centers
and Services--Charges for Services

Synopsis: Leavenworth Developmental Services, Inc., a non-profit corporation providing mental health services pursuant to K.S.A. 1979 Supp. 19-4007, is proscribed by that statute from denying service to any individual because of the latter's inability to pay for the same. However, the statute does allow such corporations to establish a schedule of charges for services for those who are financially able to pay. This schedule could allow persons unable to pay the entire cost to defer part of their bill until such time as they are able to pay. Past due accounts could be compromised or made the basis for legal proceedings, as long as service is not terminated as a means of collecting the amount due. Cited herein: K.S.A. 1979 Supp. 19-4004, 19-4007, 42 U.S.C.A. §1397a(a) (5).

* * *

Dear Representatives Crow and Dempsey:

As Representatives from the Leavenworth area, you have requested the opinion of this office concerning a problem facing Leavenworth Developmental Services, Inc. (LDS), a nonprofit corporation which provides services to physically and mentally handicapped children and adults.

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LDS has as its charge the providing of services to all such persons in the county. It is currently experiencing difficulty in collecting accounts it has with those individuals whose bills are not paid by the state, due to their income exceeding the applicable guidelines. You wish to know what steps, if any, LDS may take to remedy this situation and yet stay within state and federal requirements (the latter are relevant due to the receipt by LDS of Title XX funds). Some procedures mentioned by your letter include: (1) the establishment of a sliding payment scale for those individuals who exceed the guidelines by only a small amount; (2) the possibility of court action against those individuals who owe on past due accounts, or, conversely, the possibility of compromising such balances for less than the full amount due; and (3) whether services may be terminated in the event the above methods are not successful or are impermissible.

K.S.A. 19-4001 et seq. authorizes Kansas counties to establish community centers for the retarded, with such centers funded by mill levies authorized by K.S.A. 1979 Supp. 19-4004. However, in the event that the county commissioners determine that it is more practicable to contract for such services with a nonprofit corporation, they may, pursuant to K.S.A. 1979 Supp. 19-4007, enter into such an agreement in lieu of establishing their own facility. The latter has been done in Leavenworth County, with LDS agreeing to accept all potential clients regardless of income level. In fact, the corporation is prohibited by statute from denying service to anyone because of inability to pay. K.S.A. 1979 Supp. 19-4007. As will be noted below, the presence of such language is one of the corporation's concerns.

In addition to receiving funds from the county, LDS also receives sizeable amounts from the state, through a major purchase contract it has with the Department of Social and Rehabilitation Services (SRS). The current contract, which expires on June 19, 1980, provides for the corporation to offer "work activity/adjustment services" (i.e., supervision and instruction in work-oriented activities for the handicapped), as well as transportation for such individuals. Day care services for children also are offered at a separate location, but do not enter into this inquiry.

As part of its contract with SRS, LDS is reimbursed at certain fixed amounts for the care it provides to individuals meeting income guidelines. These guidelines, like many of the provisions contained in the contract, are a reflection of Federal requirements, in that much of the funding is provided under Title XX of the Social Security Act, 42 U.S.C.A. §§1397 et seq. Income

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guidelines are established by 42 U.S.C.A. §1397a(a)(5), which states that no Federal funds will be provided unless individuals with monthly gross incomes under a fixed amount are provided services at no charge to themselves. In Kansas, this level is set at 80% of median income, and for a family of four equals \$1,225 monthly. Any family with an income greater than this limit is not eligible for financial assistance.

The effect of such guidelines is to exempt those families under the limit from having to pay anything, while those above the limit are required to pay the full amount. For example, the cost of "work activity/adjustment services" is set by SRS in its contract with LDS at \$16.65 per diem. Transportation for a handicapped person to and from these activities costs an additional \$1.85 per diem, resulting in a total cost per week of nearly \$93. For a family of four making just over the permitted income level, this could result in an expenditure of up to 30% of their monthly income for such services, which in many cases could clearly be an intolerable burden.

This all-or-nothing situation results from language contained in the present contract between SRS and LDS. There, the latter is required to certify (at section 20) that the services to be provided under the contract are not available to "non eligibles" at a "lower cost" than those figures set out in section 17 which are quoted above. Both parties have interpreted this to mean that anyone exceeding the guidelines, even marginally, must pay the same price which SRS pays for eligible individuals. The result--LDS faces an unpaid account balance of over \$48,000 for the past three years. Because of the wording of K.S.A. 1979 Supp. 19-4007, LDS believes that it cannot terminate individuals for non-payment, and for the same reason has not instituted any legal collection proceedings. While LDS would be willing to set up a sliding scale to allow certain individuals to pay less than the full cost at the time they receive the services, the contract language has discouraged it from so doing. Hence your query.

In our opinion, the contractual provision regarding SRS payments which links such payment to the lowest amount paid by an individual must be construed in light of the statutory requirements just discussed. We find nothing in the contractual provision which requires that this language is to be interpreted to include partial payments agreed upon with private parties who are unable to pay the minimum charge. In other words, LDS has set a minimum charge that all must pay (including SRS), but when persons receiving services are unable or unwilling to pay, Section 20 cannot remain valid and yet be construed as prohibiting LDS from collecting less than the established

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minimum and deferring the rest until such time as the individual can pay. It is clear that the actual costs of the entire operation of LDS increase when thousands of dollars must be absorbed because of delinquent accounts, thus increasing the overhead. As such costs are inevitably passed on to SRS in the form of an increased minimum fee, it would appear to be to the advantage of both parties to agree that Section 20 should be construed so as to allow LDS to reduce its outstanding accounts by initially accepting less than full payment from private citizens unable to pay the entire minimum charge all at once.

Thus, we would interpret the contract to mean that the lowest amount paid by any patient is the minimum charge assessed against individual patients without consideration of settlement or collection agreements made with persons unable to pay the entire sum except but over a period of time. Any other interpretation works a disservice to both parties to the contract, as well as creating a conflict between the language of a Kansas statute (K.S.A. 1979 Supp. 19-4007) and an SRS contract provision (Section 20). It must be emphasized that we are not approving a lower minimum charge for non-eligibles. The obligation of such persons to pay the entire charge for a given service continues. However, the acceptance of installments or partial payments arranged between LDS and non-eligibles is permissible and does not alter the established minimum charges available to SRS.

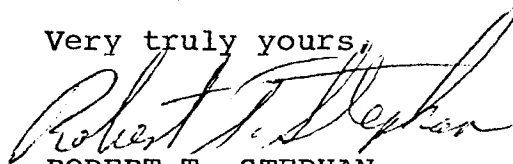
In view of the conclusion reached above, the other alternatives mentioned in your request may be addressed rather summarily. The first dealt with the possibility of court action to recover on past due accounts or, in the alternative, the compromising of claims for less than the full amount. Either procedure would appear to be permissible under the statutes, although the advisability of the former as a matter of policy would have to be carefully weighed. The second dealt with the possibility of terminating service in the event of non-payment. As noted above, this option does not appear to be feasible in light of the specific statutory mandate to the contrary. Therefore, even if suit is filed and a judgment obtained, service may not be terminated as a means of collecting the amount due.

In conclusion, Leavenworth Developmental Services, Inc., a non-profit corporation providing mental health services pursuant to K.S.A. 1979 Supp. 19-4007, is proscribed by that statute from denying service to any individual because of the latter's in-

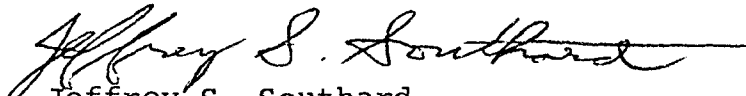
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ability to pay for the same. However, the statute does allow such corporations to establish a schedule of charges for services for those who are financially able to pay. This schedule could allow persons unable to pay the entire cost to defer part of their bill until such time as they are able to pay. Past due accounts could be compromised or made the basis for legal proceedings, as long as service is not terminated as a means of collecting the amount due.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:phf