



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 90- 48

The Honorable Dale M. Sprague
State Representative, Seventy-Third District
P.O. Box 119
McPherson, Kansas 67460

Re: Insurance -- Health Care Provider Insurance --
Professional Liability Insurance to be Maintained;
Health Maintenance Organizations; Professional
Services

Synopsis: A health maintenance organization (HMO) renders
professional services by making available to
enrollees health care services provided by
physicians who are independent contractors of the
HMO, and is therefore a health care provider
which must maintain liability insurance or
otherwise be self-insured. Cited herein: K.S.A.
40-3202; K.S.A. 1989 Supp. 40-3401; 40-3402.

* * *

Dear Representative Sprague:

As representative for the 73rd District, you request our
opinion regarding the requirement that health maintenance
organizations maintain professional liability insurance.
Specifically, you ask whether a health maintenance
organization renders professional service when it does not
employ medical doctors, but rather contracts with physicians
as independent contractors, thereby making unnecessary the
maintenance of professional liability insurance.

A health maintenance organization (HMO) is an organization which:

"(1) Provides or otherwise makes available to enrollees health care services, including at a minimum those basic health care services which are determined by the commissioner to be generally available on an insured or prepared basis in the geographic area served.

. . . .

"(3) provides physician services directly through physicians who are either employees or partners of such organization or under arrangements with a physician or group of physicians or under arrangements as an independent contractor with a physician or any group of physicians.

(4) is responsible for the availability, accessibility and quality of the health care services provided or made available." K.S.A. 40-3202(f). (Emphasis added).

Health care services are:

"basic health care services and other services, medical equipment and supplies which may include, but are not limited to, medical, surgical and dental care; psychological, obstetrical, osteopathic, optometric, optic, podiatric, nursing, physical therapy services, chiropractic services and pharmaceutical services; health education, preventive medical, rehabilitative and home health services; inpatient and outpatient hospital services, extended care, nursing home care, convalescent institutional care, laboratory and ambulance services, appliances, drugs, medicines and supplies; and any other care, service or treatment for the prevention, control or elimination

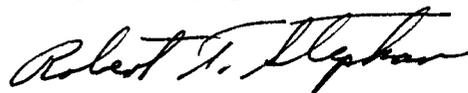
of disease, the correction of defects or the maintenance of the physical or mental well-being of human beings." K.S.A. 40-3202(e).

An HMO is a health care provider within the meaning of K.S.A. 1989 Supp. 40-3401. As a health care provider, an HMO must maintain a policy of professional liability insurance "as a condition to rendering professional service as a health care provider in this state, unless such health care provider is a self insurer." K.S.A. 1989 Supp. 40-3402(a).

You ask if a health maintenance organization renders professional services by contracting with physicians independently, and not employing them. The health care provider insurance act does not define or describe the terminology "rendering professional services" and our research has disclosed no Kansas court decisions which address the current statutory language. See Attorney General Opinion No. 85-92. However, it appears the legislative intent is to include, as professional services of an HMO, both the provision of health care services, and the arrangement for health care services. Regardless of the arrangement between the HMO and physician, it appears that if the HMO is arranging for health care services by a physician, the HMO is a health care provider which must meet the statutory mandate of maintaining liability insurance.

In conclusion, it is our opinion that an HMO renders professional services by making available to enrollees health care services provided by physicians who are independent contractors of the HMO, and is therefore a health care provider which must maintain liability insurance or otherwise be self-insured.

Very truly yours,



ROBERT T. STEPHAN
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Mark W. Stafford
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