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Robert R. Corbin

March 26, 1979

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Assistant Director
Disease Control Services
Arizona Department of Health Services
1740 West Adams Street
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Re: 179-082 (R79-001)

Dear Dr. Sarn:

Your letter of December 29, 1978, requests our opinion concerning two issues which involve the proper interpretation of A.R.S. § 36-2101 et seq. You first inquire whether any entity other than a licensed home health agency would qualify as a "home delivery health service" as that phrase is used in A.R.S. § 36-2102. This section reads as follows:

A. The director may contract with any Arizona hospital, the University of Arizona medical school or home delivery health service for:

1. The establishment, operation and administration of regional limited care dialysis centers.
2. Assistance in home dialysis.
3. Kidney transplants.

It is evident that the Legislature intended to limit the persons with whom the Director might contract for kidney treatment services to three classes. The first two of these classes are reasonably susceptible to definition: "any Arizona hospital" we presume refers to hospitals licensed as such by the

state and "the University of Arizona medical school", which is not itself an entity capable of contracting, we presume refers to the Arizona Board of Regents acting with respect to the University of Arizona College of Medicine. If the limitations relating to these two classes are to be given purpose, the remaining class "home health delivery service" must apply to a definite type of facility and not to all other health care providers.

The same legislative session that enacted A.R.S. § 36-1202 also enacted amendments to A.R.S. §§ 20-826, 20-1342 and 20-1402 to require all health and disability insurance policies in Arizona to provide coverage:

1. For performance of any surgical service which is covered by the terms of such contract, regardless of the place of service;
2. For any home health service performed by a licensed home health agency which a physician has prescribed in lieu of hospital service, providing the hospital service would have been covered.
3. For any diagnostic service which a physician has performed outside a hospital in lieu of inpatient service, providing the inpatient service would have been covered; and
4. For any service performed in a hospital's outpatient department or in a free-standing surgical facility, providing such service would have been covered if performed as an inpatient service. Ch. 171, Laws 1971.

Paragraph 2 demonstrates that the Legislature intended to encourage the delivery of health care in the patient's home whenever possible, provided the care being delivered met appropriate standards.

During that same session, the 30th Legislature also re-enacted the statutes relating to licensure of health care institutions. In Atty.Gen.Ops. No. 71-27 and No. 71-28, copies attached, we concluded that the health care institution licensing statutes were applicable to home health agencies as defined in A.R.S. § 36-151 and as referred to in the above amendments to the state's insurance code. Accordingly, the Department of Health Services promulgated licensing regulations applicable to home health agencies. See A.C.R.R. R9-10-1111 et seq. Home health agencies are the only licensed "home delivery health service" existent in Arizona.

For the foregoing reasons, we believe that the phrase "home delivery health service" as used in A.R.S. § 36-1202 has the same meaning as "home health agency".

Your second question concerns the scope of kidney treatment services for which the Director may contract when dealing with a home health agency (home delivery health service). The provisions of A.R.S. §§ 36-2102, supra, and 36-2103 are instructive. The latter section reads as follows:

Each regional limited care dialysis center shall:

1. Provide dialysis treatment services and supplies for home dialysis treatment services and kidney transplants and related services. Such services and supplies shall be provided only when funds from medical insurance, if any, of an individual patient are exhausted or insufficient to purchase such supplies or services.
2. Develop and utilize methods of dialysis designed to make the process more efficient and economical.
3. Seek the active participation of and consideration with industry in order to make equipment and procedures more efficient.

By A.R.S. § 36-2102, subsection A, the Director is authorized to contract with persons in one or more of the specified classes for one or more of three services, i.e., operation of a "regional limited care dialysis center", provision of "assistance in home dialysis" or performance of kidney transplants. A.R.S. § 36-2103 applies only to the first of these three services and requires that "(e)ach regional care dialysis center" shall provide "home dialysis treatment services and kidney transplants. . ." as well as perform other specified services and functions. Therefore it appears that, if the Director contracts with a home health agency (home delivery health service) to serve as the limited care dialysis center for its region, it must perform all of the functions specified in A.R.S. § 36-2103. Alternatively, if it is contracting only to provide assistance in home dialysis, it may provide only that service.

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We see no reason why a qualified contractor which is a regional care dialysis center could not subcontract for some of the services required to be provided. The providing entity, of course, must hold a current and valid license and utilize appropriately licensed personnel when performing functions for which licensure is required. Accordingly, it is our opinion that an entity which meets the statutory qualifications to be a kidney treatment service contractor may provide the required services directly, if applicable license requirements are met, or by subcontract, if its contract with the Director permits.

If we can be of further assistance to you in this matter, please advise.

Sincerely,



BOB CORBIN
Attorney General

BC/mm