



**THE ATTORNEY GENERAL  
OF TEXAS**

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September 28, 1988

Honorable Bill Sims  
State Senator - 25th District  
Texas State Senate  
P. O. Box 12068  
Room 421, Capitol Building  
Austin, Texas 78711

LO-88-110

Dear Senator Sims:

You ask us to investigate and make a ruling on recent changes to the basic coverage standards adopted by the Administrative Council of the Texas Higher Education Coordinating Board in connection with insurance coverage under the Texas State College and University Employees Uniform Insurance Benefits Act, Insurance Code article 3.50-3.

The Administrative Council is directed by section 4(b)(4)(A) of article 3.50-3 to

determine basic coverage standards which shall be comparable to those commonly provided in private industry and those provided employees of other agencies of the State of Texas under the Texas Employees Uniform Group Insurance Benefits Act, after considering recommendations of the advisory committee. In determining these standards, the council may provide reasonable flexibility for institutions to design a plan around existing local conditions.

The changes in basic coverage standards to which you refer were made by amendments to title 19, section 25.33, of the Texas Administrative Code, effective June 9, 1988. See 13 Tex. Reg. 2611 (1988). The changes permit institutions of higher education to reduce the number of days allowable in employee health insurance plans for inpatient psychiatric and drug abuse treatment, to provide benefits for non-residential day treatment programs for psychiatric and

Honorable Bill Sims  
September 28, 1988  
Page 2

drug abuse treatment, and to increase benefits for outpatient treatment of psychiatric disorders and drug abuse.

You suggest that the changes will result in state college and university employees and their dependents having to bear a greater burden of paying for the cost of care for psychiatric and drug abuse treatment, will set a bad precedent vis-a-vis standards of insurance coverage for the public at large; will operate to discriminate against and to stigmatize the mentally ill, and will result in greater demands on the Texas Department of Mental Health and Mental Retardation. You also state that the changes appear to violate the above-quoted requirement of article 3.50-3, section 4(b)(4)(A), that the basic coverage standards be "comparable" to those commonly provided in private industry and to other state employees.

Whether the basic coverage standards adopted under article 3.50-3, section 4(b)(4)(A), are "comparable" to those in private industry or for other state agencies is a question of fact. We have no authority to make findings of fact. We note that Webster's defines "comparable" as "equivalent" or "similar." Webster's Ninth New Collegiate Dictionary 267 (1983). We also note that the language of section 4(b)(4)(A) was amended by Acts 1985, 69th Legislature, chapter 141, section 1, at 662, to require the standards of basic coverage adopted by the Administrative Council to be "comparable" rather than "at least equal" to those in private industry or for other state agencies -- an indication that the legislature intended to give more flexibility to the Coordinating Board in its determinations of basic coverage standards.

Were a court to review the changes in basic coverage standards made by the Administrative Council, it would look to whether the agency had acted reasonably to carry out the purposes of the legislature as expressed in article 3.50-3. See, Beall Medical Surgical Clinic and Hospital, Inc. v. Texas State Board of Health, 364 S.W.2d 755 (Tex. Civ. App. - Dallas 1963, no writ), and authorities cited therein. Whether the council has acted reasonably here involves, again, determinations of fact which we have no power to make.

Although we share your concern that state college and university employees be provided with the best possible insurance coverage available within existing fiscal constraints, we believe that policy decisions must be left at least in the first instance to the Administrative Council.

Honorable Bill Sims  
September 28, 1988  
Page 3

The legislature may, of course, deem it appropriate to provide the Council with more specific guidance in these matters in the future. We do understand that there is a nationwide trend in insurance coverage away from inpatient and toward outpatient care for psychiatric and drug abuse treatment, motivated by increasing demand on limited resources. Extensive testimony was heard by the council in connection with the adoptions of the changes in basic coverage standards. See 13 Tex. Reg. 2611 (introductory comments to the new rules' final adoption).

Again, the questions of whether the basic coverage standards as amended are "comparable" to those in private industry or for other state agencies, and whether the council has acted reasonably under article 3.50-3 in making the changes involve ultimately questions of fact beyond the purview of the Opinion Committee.

Please do not hesitate to contact us if we can be of assistance in the future.

Very truly yours,



William Walker  
Assistant Attorney General  
Opinion Committee

APPROVED: SARAH WOELK, Chief  
Letter Opinion Section

WW/bc

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