

OPINION NO. 79-066**Syllabus:**

A patient who knowingly remains in a hospital, after being informed by the hospital's utilization review committee that further hospitalization is not necessary and that any associated expense will not be covered by insurance, is not acting in good faith for purposes of R.C. 1739.06, and thus may voluntarily subject himself to the charges for such services.

To: Anthony L. Gretick, Williams County Pros. Atty., Bryan, Ohio
By: William J. Brown, Attorney General, October 1, 1979

I have before me your request for my opinion interpreting the first paragraph of R.C. 1739.06. Specifically, your letter indicates that occasionally a patient who is a subscriber to a hospital service association, as defined in R.C. 1739.01(A) (e.g. Blue Cross Plans), desires to remain in a hospital facility beyond the time determined to be necessary by a utilization review committee. The patient has sufficient means to pay for the hospital care, and the hospital has available bed space. In this situation, you inquire as to whether the first paragraph of R.C. 1739.06 prohibits the billing by the hospital, and the payment by the patient, of charges for the hospital care rendered beyond the time that the utilization review committee determines necessary.

R.C. 1739.06 regulates subscription contracts between a hospital service association and its subscribers. The specific portion to which your inquiry is directed was added in 1976 and reads:

No subscriber of a corporation licensed under Chapter 1739 of the Ohio Revised Code shall be billed either by a hospital or the plan for rendered health care services adjudged unnecessary by utilization review mechanism recognized by the plan or the hospital, provided such subscriber has acted in good faith. The contract between the plan and the hospital may specify the conditions under which the plan or the hospital shall sustain the loss of revenue.

It is clear that the intent of this paragraph is to prevent a hospital from charging for unnecessary services, which, in turn results in unnecessary and additional costs to all of the subscribers of the plan. Elimination of unnecessary expense and strict control of costs by both the hospital service association and the member health care facilities such as hospitals is an obvious goal of R.C. Chapter 1739. See R.C. 1739.01(M) which lists a number of objectives in this regard.

If the utilization review committee determines that further hospital services are unnecessary, R.C. 1739.06 precludes the subscriber from being billed. The provision, however, is limited by the proviso that the "subscriber has acted in good faith."

In the situation which you describe, the subscriber would not be acting in good faith, assuming that he had been notified of the decision of the utilization review committee that further hospitalization is no longer necessary and that any expense associated with extended hospitalization would not be covered by the plan. Instead, he would be voluntarily aiding in the generation of unnecessary charges and knowingly subjecting himself to such charges.

Further, I am unable to find any provisions in R.C. Chapter 1739 which would prohibit a subscriber and a hospital from entering into an ordinary contractual

arrangement whereby the subscriber agrees to pay the hospital personally for services determined to be unnecessary by the utilization review committee. Such an agreement, because it generates no unnecessary costs to the hospital service association, would not violate the spirit and intent of R.C. Chapter 1739. Rather, it represents a simple contract between two parties, the hospital and the patient, with no expense to anybody other than those parties.

In light of the foregoing, it is my opinion, and you are advised, that a patient who knowingly remains in a hospital, after being informed by the hospital's utilization review committee that further hospitalization is not necessary and that any associated expense will not be covered by insurance, is not acting in good faith for purposes of R.C. 1739.06, and thus may voluntarily subject himself to the charges for such services.