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PATIENTS, OHIO TUBERCULOSIS HOSPITAL—FOUND TO BE NON-TUBERCULOUS—CHARGES FOR CARE AND TREATMENT—§3701.64 R.C.—COUNTY LIABLE FOR CARE AND TREATMENT OF NON-TUBERCULOUS PATIENT ONLY WHEN REIMBURSEMENT IN FULL IS MADE TO COUNTY, §3701.65 R.C.—ABILITY OF NON-TUBERCULOUS PATIENT TO PAY FOR CARE AND TREATMENT MAY NOT BE DETERMINED BY DIRECTOR OF HEALTH.

SYLLABUS:

1. When a patient admitted to the Ohio tuberculosis hospital under the provisions of Section 3701.63, Revised Code, is found not to have tuberculosis, but is continued temporarily in a patient status under the provisions of Section 3701.65, Revised Code, and the county of his residence is being reimbursed in full for the cost of his hospital care, such a patient is hospitalized under Sections 3701.60 to 3701.64, inclusive, Revised Code, and the auditor of state is required to transmit to the board of county commissioners of such county a statement of the amount due for such care and treatment less a credit of one dollar and twenty-five cents per day as provided in Section 3701.64, Revised Code.

2. Under the provisions of Section 3701.65, Revised Code, the county is required to pay the state the expenses of care and treatment of a non-tuberculous patient only when the county is being paid back in complete measure for such expense.

3. The director of health has no authority to make a determination of how much of the *per diem* rate a non-tuberculous patient is able to pay and bill the county commissioners of the county of his residence for an amount less than the full charge for his care and treatment.

Columbus, Ohio, September 3, 1958

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 3701.64 of the Revised Code provides:—

‘ The charge for care and treatment of patients admitted to the Ohio Tuberculosis Hospital shall be borne by the county in which such patient lives. Such charge should be at the *per diem* rate determined by the Director of Health.’

“The Director of Health, pursuant to this provision, has established a rate of \$8.50 per day.

“Section 3701.65 of the Revised Code, however, provides:—

‘When a patient, admitted to the Ohio tuberculosis hospital under the provisions of section 3701.63 of the Revised Code, is found not to have tuberculosis, the county commissioners of the county in which the patient resides shall no longer be billed for care and treatment of said patient *except when the county is being reimbursed in full for the cost of hospital care.*

‘Such a non-tuberculous patient may continue to receive hospital care for a period of reasonable length as may be recommended by the medical superintendent, when beneficial treatment can be applied.

‘Such a non-tuberculous patient shall not receive hospital care for indefinite and prolonged periods of time for the treatment of chronic or incurable non-tuberculous disease.’

“There are quite a number of patients whose care and treatment as non-tuberculous patients is being paid for either by individuals responsible for their support, insurance companies, or by the Workmens’ Compensation Division.

“Our first question is, ‘Shall the Ohio Tuberculosis Hospital bill such patients at the established rate of \$8.50 per day as set by the Director of Health, or shall it allow the credit of \$1.25 per day which is provided for in Section 3701.64 of the Revised Code. It is significant to note that this section (Revised Code 3701.64) requires the Director of Health to only certify to the Auditor of State the amounts due from each county for the care and treatment of patients hospitalized under sections 3701.60 to 3701.64, inclusive, of the Revised Code, whereas the billing in question is made under the provision of Section 3701.65 of the Revised Code, since this billing is to the County Commissioners of the county of residence of the patient it would appear that the Commissioners are merely a collecting or transmitting agency, and the charge should be made at the rate fixed by the Director of Health; namely, \$8.50 per day.

“Our second question is, again referring to 3701.65 above noted, (see underscored matter) as to what is meant by ‘Where the county is reimbursed in *full* for the cost of hospital care’. According to our Examiners’ reports, it frequently happens, that the patient either through insurance policies in effect or by reason of personal resources would be able to pay a substantial part of the per diem charge but, because he is unable financially to pay ‘in full’, no billing whatsoever is made. The Ohio Tuberculosis Hospital has asked us the question whether it could lawfully bill such

counties for part of the per diem charge that the patient, or those responsible, such as insurance companies, parents, guardians, etc., could pay.

“One way that suggests itself, since the nature of the illness is such that frequently long stays in the hospital are required for care and treatment, is that the billing be made on some ‘full days’ which such a patient could with his resources be able to pay.

“It is also well to point out that frequently the personal representatives of a deceased patient *voluntarily* make a payment for such care.

“Our specific question then, ‘May the Ohio Tuberculosis Hospital render a bill to the Board of County Commissioners for the treatment and care of a non-tuberculous patient which would be less than the established per diem rate, accepting the amount that the patient is able to pay and forgiving the remainder which he is unable to pay?’

“I am not unmindful of provisions of Section 115.10 of the Revised Code and presumably it would be possible to effect partial reimbursement of the total cost of hospitalization through the provisions of this section. Although again it must be borne in mind that the billing referred to is not made to the patient, but to the Board of County Commissioners of that county in which the patient is a resident.”

The statutes here involved are Sections 3701.63, 3701.64, and 3701.65, Revised Code.

Section 3701.63, Revised Code, is the admissions statute. It provides as follows:

“The Ohio tuberculosis hospital shall be open to any legal resident of this state having or suspected of having tuberculosis and requiring care and treatment in a tuberculosis hospital subject to the admission requirements established by the department of health.

“Application for admission to said hospital shall be made to the director of health. Such application shall be subject to the recommendations of the health commissioner of the health district in which the applicant lives and the medical superintendent of the approved district, county or municipal tuberculosis hospital for the area in which the applicant lives. The application for admission to said hospital shall be approved by the board of county commissioners of the county in which the applicant lives.

“The hospital is authorized to establish an out-patient department to provide diagnostic medical services as may be required by any legal resident of this state having or suspected of having

tuberculosis and requiring services which can be provided in an out-patient department but which are not available from physicians or facilities in the area in which the applicant lives. Application for acceptance to the out-patient department shall be made to the director of health."

Section 3701.64, Revised Code, provides for the charge for care and treatment and reads as follows :

"The charge for care and treatment of patients admitted to the Ohio tuberculosis hospital shall be borne by the county in which such patient lives. Such charge shall be at the per diem rate determined by the director of health. The charge for diagnostic services shall be at a rate determined by the director. Such charge shall be borne by the governmental or private agency requesting such service or by the patient receiving such service. If, after investigation, it is found that any such applicant or patient, or any person legally responsible for his support, requesting such a service, is unable to pay the full charge of the diagnostic service, the director shall determine the amount such applicant, patient or person shall pay. The director shall certify to the auditor of state the amounts due from each county for the care and treatment of patients hospitalized under sections 3701.60 to 3701.64, inclusive, of the Revised Code. The auditor of state shall transmit to the board of county commissioners of each such county a statement of the amount due for such care and treatment less a credit of one dollar and twenty-five cents per patient per day.

"All moneys received by the state for such care and treatment at such hospital shall be paid into the state treasury."

Section 3701.65, Revised Code, provides for care of non-tuberculous patients and reads as follows :

"When a patient, admitted to the Ohio tuberculosis hospital under the provisions of section 3701.63 of the Revised Code, is found not to have tuberculosis, the county commissioners of the county in which the patient resides shall no longer be billed for care and treatment of said patient except when the county is being reimbursed in full for the cost of hospital care.

"Such a non-tuberculous patient may continue to receive hospital care for a period of reasonable length as may be recommended by the medical superintendent, when beneficial treatment can be applied.

"Such a non-tuberculous patient shall not receive hospital care for indefinite and prolonged periods of time for the treatment of chronic or incurable non-tuberculous disease."

The General Assembly has provided in this section, Section 3701.65, Revised Code, that when a patient is admitted to the Ohio tuberculosis hospital under the provisions of Section 3701.63, Revised Code, that is, as a patient having or suspected of having tuberculosis, and in need of care and treatment in a tuberculosis hospital, and subsequently, a determination is made by the hospital that the patient is non-tuberculous, then the county is *no longer* to be billed for his care and treatment except when the county is being reimbursed in full for the cost of his hospital care. Stated affirmatively, when a patient is admitted to the Ohio tuberculosis hospital under the provisions of Section 3701.63, Revised Code, the auditor of state shall continue to bill the county for the care and treatment of a non-tuberculous patient when the county is being reimbursed in full for such charge.

Section 3701.64, Revised Code, is the only statute that deals with billing for the cost of care and treatment in the Ohio tuberculosis hospital.

In pertinent part it provides that :

“* * * The director shall certify to the auditor of state the amounts due from each county for the care and treatment of patients hospitalized under sections 3701.60 to 3701.64, inclusive, of the Revised Code. The auditor of state shall transmit to the board of county commissioners of each such county a statement of the amount due for such care and treatment less a credit of one dollar and twenty-five cents per patient per day.”

Clearly the county is to be billed for patients hospitalized under Sections 3701.60 to 3701.64, inclusive, Revised Code, and a credit of one dollar and twenty-five cents per patient per day allowed.

When a resident is admitted to the Ohio tuberculosis hospital as a patient having or suspected of having tuberculosis and needing care and treatment in a tuberculosis hospital as provided in Section 3701.63, Revised Code, is such a patient “hospitalized” under Sections 3701.60 to 3701.64, inclusive, Revised Code, as that term is used in Section 3701.64, Revised Code?

In construing statutes, in the absence of legislative intent to the contrary, common terms are presumed to have been used in their common sense. Sutherland, *Statutory Construction*, Section 4919, p. 436.

Webster defines “hospitalized” to mean “placed in a hospital for treatment.”

Therefore, in specific answer to your first question, I am of the opinion that a patient admitted to the Ohio tuberculosis hospital under the provisions of Section 3701.63, Revised Code, as one having or suspected of having tuberculosis and needing care and treatment, is a patient "hospitalized" under Section 3701.60 to 3701.64, inclusive, Revised Code, and that the auditor of state is required to allow a credit of one dollar and twenty-five cents per patient per day in billing the county for the cost of such care and treatment as provided in Section 3701.64, Revised Code, when the patient is found to be non-tuberculous and the county is being reimbursed in full for the cost of hospital care.

In your second question you ask "what is meant by the phrase in Section 3701.65, Revised Code, 'the county is reimbursed in *full* for the cost of hospital care'".

As noted above, in construing statutes, in the absence of a legislative intent to the contrary, common terms in a statute are presumed to have been used in their common sense. Sutherland, Statutory Construction, Section 4919, p. 436.

Webster defines the term "reimburse" to be "to replace in a treasury or purse as an equivalent for what has been taken, lost or expended; to refund; to pay back."

The same authority defines "full" to be "complete measure; utmost extent; the highest state, condition or degree."

Applying the above rule of construction, it is clear to the writer that the county is required to pay the state for the expenses of care and treatment of a non-tuberculous patient only when the county is being paid back in complete measure for such expense.

I assume that the reason "no billing whatsoever is made" by the director of health in cases the county is not being reimbursed in full is because of what was said by my immediate predecessor in Opinion No. 3646, Opinions of the Attorney General for 1954, p. 150. The third paragraph of the syllabus of that opinion reads as follows:

"3. Where a patient in the Ohio tuberculosis hospital has been admitted therein without a requirement by the county commissioners of such reimbursement, and where no such reimbursement arrangement is currently in operation, and where such patient is subsequently found not to have tuberculosis but is continued temporarily in a patient status under the provisions of Section 3701.65.

Revised Code, the expense of such continued hospitalization is to be met from state funds available to such hospital.”

In support of this conclusion it is said, at page 154:

“We have already noted that applications for admission to the Ohio tuberculosis hospital are subject to the recommendation of designated local health officials and must be approved by the local county commissioners. Quite clearly one of the matters of interest in such case is financial, for the commissioners must find the funds to meet the expense for which they will be billed by the state hospital. They are, therefore, in a position to investigate the financial ability of the patient, and others legally responsible for his support, to reimburse the county to the extent pointed out in my 1952 opinion, *supra*, and to insist in proper cases that arrangements therefor be made as a condition of their approval of the application. For this reason, and in view of the general legislative policy in the matter of such reimbursement, I am impelled to the view that such in part was the legislative purpose providing for such approval by the commissioners.

“Where this legislative purpose is followed, therefore, it will be seen that in each instance in which a determination is made by the Ohio tuberculosis hospital authorities that a patient does not have tuberculosis, a determination will already have been made at the local level as to the patient’s financial ability to reimburse the county. This circumstance thus suggests the reason for the provision, already noted in Section 3701.65, Revised Code, for a continuation of the billing to the commissioners only in the event a reimbursement arrangement is currently in effect; and such provision considered in relation to the absence of any mention of any other means of collecting the expense of hospitalization from any other source suggests also that where the local authorities have not found the patient able to reimburse the county, the expense of continued hospitalization shall be borne by the Ohio tuberculosis hospital from funds otherwise available to it.”

I am in accord with the conclusion there stated and the reasoning in support thereof.

I think also that it is significant that subsequent to the time this opinion was rendered, the General Assembly amended Sections 3701.63 and 3701.64, Revised Code. In amended Senate Bill No. 162, 126 Ohio Laws, 110-111, effective October 4, 1955, Section 3701.63, Revised Code, was amended to authorize the Ohio tuberculosis hospital to establish an out-patient department to provide diagnostic services for residents of Ohio having or suspected of having tuberculosis. Section 3701.64, Revised Code,

was amended to provide that the charge for diagnostic services shall be at a rate determined by the director; that such charge is to be borne by the governmental or private agency requesting such services *or by the patient receiving such service*; and, if after investigation, it is found that such applicant or patient, or any person legally responsible for his support, requesting such a service, *is unable to pay the full charge of the diagnostic service, the director shall determine the amount such applicant patient or person shall pay.*

Thus you will note that as to diagnostic services, the legislature authorized the director to investigate an applicant's or patient's financial status and to make a determination of how much of the full charge the applicant, patient, or other person should pay. I find no such authority in the case of non-tuberculous patients admitted under Section 3701.63, Revised Code.

In your specific question you ask:

“May the Ohio Tuberculosis Hospital render a bill to the Board of County Commissioners for the treatment and care of a non-tuberculous patient which would be less than the established per diem rate, accepting the amount that the patient is able to pay and forgiving the remainder which he is unable to pay?”

For the reasons stated above your specific question must be answered in the negative.

It is my opinion and you are accordingly advised that:

1. When a patient admitted to the Ohio tuberculosis hospital under the provisions of Section 3701.63, Revised Code, is found not to have tuberculosis, but is continued temporarily in a patient status under the provisions of Section 3701.65, Revised Code, and the county of his residence is being reimbursed in full for the cost of his hospital care, such a patient is hospitalized under Sections 3701.60 to 3701.64, inclusive, Revised Code, and the auditor of state is required to transmit to the board of county commissioners of such county a statement of the amount due for such care and treatment less a credit of one dollar and twenty-five cents per day as provided in Section 3701.64, Revised Code.

2. Under the provisions of Section 3701.65, Revised Code, the county is required to pay the state for the expenses of care and treatment of a non-tuberculous patient only when the county is being paid back in complete measure for such expense.

3. The director of health has no authority to make a determination of how much of the *per diem* rate a non-tuberculous patient is able to pay and bill the county commissioners of the county of his residence for an amount less than the full charge for his care and treatment.

Respectfully,
WILLIAM SAXBE
Attorney General