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HOSPITAL CHARGES

1. BOARD OF COUNTY COMMISSIONERS — REIMBURSEMENT FOR CHARGES FOR CARE AND TREATMENT AT OHIO TUBERCULOSIS HOSPITAL—§3701.64 RC.
2. CHARGES FOR CARE AND TREATMENT OF PATIENT FOUND TO BE NON-TUBERCULOUS TO BE CHARGED TO COUNTY ONLY WHEN COUNTY IS BEING REIMBURSED IN FULL FOR SUCH CHARGES.

SYLLABUS:

1. The board of county commissioners has no authority to require reimbursement for charges of care and treatment administered at the Ohio tuberculosis hospital after the application for admission has been approved and a resolution passed accepting the responsibility on the part of the county for the charges for care and treatment administered as provided in Section 3701.64, Revised Code.

2. When a patient admitted to the Ohio tuberculosis hospital is found not to have tuberculosis the charge for care and treatment shall be billed to the county commissioners only when the county is being reimbursed in full for such charges.

Columbus, Ohio, August 22, 1957

Hon. James H. Estell, Prosecuting Attorney
Holmes County, Millersburg, Ohio

Dear Sir:

I have before me your request for my opinion reading in pertinent part:

“A question has been presented to me by the Auditor of Holmes County who is also clerk of the board of county commissioners concerning the matter of reimbursement to the county of costs of the county in connection with care and treatment of patients admitted to Ohio tuberculosis hospitals upon approval of the applications for admissions by the county commissioners.

“Opinions of the Attorney General 1954, Opinion No. 3646 reported at page 150, Syllabus (2) of the opinion just cited read as follows:

'The county commissioners may investigate the financial status of applicants for admission to the Ohio tuberculosis hospitals, and of persons legally responsible for the support of such applicants, and may require such reimbursement in proper cases as a condition of their approval of application for admission to such hospital.'

"The situation is this: We have had three patients who were admitted to the Ohio tuberculosis hospital upon approval of the applications for admission by the county commissioners. The county has paid the total costs of this care and treatment in the cases of two of the patients who have now been discharged. In the third case the county paid for the care and treatment up and until the time a determination was made that the patient was not tubercular after which time the costs were met from state funds in line with Syllabus (3) of the opinion cited above.

"The auditor has reason to believe that the persons responsible for the support of these patients have adequate resources from which to make reimbursement to the county for the costs of care and treatment afforded. He has requested me to advise the commissioners that some action be taken toward collection. However, prior to the approval of the applications for admissions in each case the county commissioners did not make any investigations of the financial status of the applicants or of those responsible legally for their support. Also an examination of the approval of these applications as shown upon the Journal of said Board of County Commissioners does not disclose any mention of reimbursement nor does the journal indicate that approval of the applications for admission was granted upon condition that reimbursement be made to the county in any amount. I am informed that in only one case was the matter of reimbursement discussed and then only upon an informal basis with no definite formal action taken or determination recorded. I attach an abstract of these resolutions of approval as they appear upon the Journal for your inspection.

"I am also informed that statements or bills for the actual costs as paid by the county were sent to the persons responsible for their support by the Auditor and at his own instance. In response to one of these statements the person so billed did pay a part of the amount of the statement but ceased his payments upon learning that the others were not so paying.

"From my examination of the opinion above cited it appears to me that a literal interpretation of the language of the Syllabus (2) presumes that if reimbursement is to be made it must be made upon the basis of an investigation of financial status and also that it must be a condition of the approval of the application for admission by the commissioners.

“Therefore, upon these facts and in view of the opinion cited I request your opinion on the following questions :

‘Where the application of a patient is approved for admission to an Ohio tuberculosis hospital by the county commissioners and prior to said approval no investigation is made of the financial status of the applicant or the person legally responsible for his support and no condition of reimbursement is contained in the approval for admission as shown upon the commissioners journal, may the county thereafter seek and obtain reimbursement for the actual costs of treatment and care of such patients.

‘Further, if such reimbursement may be sought and collected under the above situation, by whose direction and in whose name shall an action for collection be prosecuted if the same be found necessary for collection’

Since Opinion No. 3646, Opinions of the Attorney General for 1954, p. 150, was rendered Sections 3701.63 and 3701.64, Revised Code, have been amended in part. These amendments and the enactment of Sections 3701.80 to 3701.84, Revised Code, require additional consideration of the question you present beyond the holding in Opinion 3646, *supra*.

The pertinent statutes are:

Section 3701.63, Revised Code:

“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.” (Emphasis added.)

Section 3701.64, Revised Code:

“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 government 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 persons 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.”
(Emphasis added.)

Section 3701.65, Revised Code:

“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.”
(Emphasis added.)

By the amendment to Section 3701.64, *supra*, a new classification of medical service was added, *i.e.*, diagnostic services, and charges for such services are to be borne by the “governmental or private agency requesting such service or by the patient receiving such service.” The duty of investi-

gating the ability to pay for treatment of a patient receiving diagnostic services is placed upon the director of health by virtue of Section 3701.64, *supra*. No such investigation is provided for in cases of care and treatment charges which are to be borne by the county. In Opinion No. 3646, *supra*, paragraph two of the syllabus states that a board of county commissioners *may investigate and determine* what portion, if any, of the charges for care and treatment should be remitted to the county by the person legally responsible for the support of the applicant; approval of the application was authorized to be made conditioned upon this reimbursement at the discretion of the board of county commissioners.

In the cases you present the board of county commissioners agreed to pay the expenses of each of the three applicants. By operation of Section 3701.64, *supra*, the board of county commissioners must bear the charges for care and treatment when they approve the application for admission. By the resolution passed by the board of county commissioners the county assumed the responsibility of meeting the entire charges without reimbursement.

I invite your attention to Sections 3701.82, 3701.83, and 3701.84, Revised Code. These sections deal with the Southeast Ohio tuberculosis hospital.

Section 3701.82, Revised Code:

“The Southeast 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 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. The application for admission to said hospital shall be approved by the board of county commissioners of the county in which the applicant lives.

Section 3701.83, Revised Code:

“The charge for care and treatment of patients admitted to the Southeast 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 director shall certify to the auditor of state the amounts due from each county for the care and treatment of patients hospitalized under

sections 3701.80 to 3701.84, 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 3701.84, Revised Code:

"The hospital is authorized to establish an out-patient department to provide diagnostic medical, follow-up, rehabilitation and other extra medical services as may be required by any legal resident of this state having or suspected of having tuberculosis and requiring the services of an out-patient department. Application for acceptance to the out-patient department shall be made to the director of health. The charge for such services shall be borne by the patient. Such charge shall be at a rate determined by the director, who is authorized to collect for such charge. All moneys received by the director for such services rendered in the out-patient department shall be paid into the state treasury."

These sections became effective September 20, 1955, after the rendering of Opinion No. 3646, *supra*, and evidence a further expression of clear legislative intent concerning admission procedure and charges for services. It will be noted that eligibility for admission to tuberculosis hospitals under Sections 3701.64 and 3701.82, Revised Code, are identical. However, the procedure for admission to the Southeast hospital is to be distinguished from that applicable to the Ohio hospital in that the recommendation of the medical superintendent of the approved district, county, or municipal tuberculosis hospital for the area is not provided for in Section 3701.82, Revised Code, dealing with the Southeast hospital. Charges for *care* and *treatment* at the Southeast hospital are to be borne by the county. I find no section relative to the Southeast hospital comparable to Section 3701.65, Revised Code, which relieves the county from charges for care and treatment if the patient is found not to have tuberculosis.

By reason of these amendments and enactments the following conclusions may be drawn: (1) The charges for *care* and *treatment* are to be borne by the county in which the applicant lives; (2) Charges for diagnostic, medical, follow-up, rehabilitation and other extra medical services as may be required administered through the Southeast Ohio tuberculosis

hospital are to be borne by the patient; (3) Charges for diagnostic services which may be provided by the out-patient department at the Ohio tuberculosis hospital are to be borne by the governmental or private agency requesting such service or by the patient receiving such service; (4) Charges for care and treatment may not be charged to the board of county commissioners when, under Section 5701.65, Revised Code, the patient is found not to have tuberculosis unless the county is being reimbursed in *full* for the cost of such care.

Since the General Assembly has seen fit to make a distinction between diagnostic services and care and treatment services insofar as the charges for such services are concerned, that language of Opinion No. 3646, *supra*, concerning general legislative policy is no longer applicable. Charges for care and treatment have been separated from other types of services. A different policy has been adopted for the Southeast hospital insofar as reimbursement to the county is concerned.

It is well established that boards of county commissioners have only such powers as are expressly conferred or necessarily implied from express powers. The board of county commissioners must approve applications for care and treatment and bear the charge for such services subject to the deduction of one dollar and twenty-five cents per patient per day as provided in Sections 3701.64 and 3701.83, Revised Code. The question of reimbursement to the county is mentioned only indirectly in Section 3701.65, Revised Code; even here reimbursement in full is the condition upon which the board of county commissioners are billed for care and treatment for a patient found not to have tuberculosis.

Since the county approved the application and in so approving assumed the expense of care at the exclusion of the applicant or the person having a legal duty to pay for such care and finding no statutory basis for requiring subsequent reimbursement to the county, it is my opinion and you are advised that:

1. The board of county commissioners has no authority to require reimbursement for charges of care and treatment administered at the Ohio tuberculosis hospital after the application for admission has been approved and a resolution passed accepting the responsibility on the part of the county for the charges for care and treatment administered as provided in Section 3701.64, Revised Code.

2. When a patient admitted to the Ohio tuberculosis hospital is found not to have tuberculosis the charge for care and treatment shall be billed to the county commissioners only when the county is being reimbursed in full for such charges.

Respectfully,

WILLIAM SAXBE

Attorney General