

OPINION NO. 2005-039**Syllabus:**

A county department of job and family services is not included within the language “[t]he department of job and family services, in accordance with [R.C. Chapter 5101] and the rules adopted under those chapters,” as used in R.C. 3701.741(C)(1)(c).

To: Pat Story, Meigs County Prosecuting Attorney, Pomeroy, Ohio
By: Jim Petro, Attorney General, October 28, 2005

You have requested an opinion concerning the application of R.C. 3701.741 to requests made by a county department of job and family services to a health care provider for copies of medical records. Your specific question asks “[w]hether the *county* Department of Job and Family Services [DJ&FS] is exempt from paying for copies of medical records from health organizations pursuant to R.C. 3701.741 where the county department is solely responsible for determining the Medicaid eligibility of a client.” For the reasons that follow, we conclude that R.C. 3701.741(C)(1)(c) requires a health care provider or a medical records company to provide one free copy of an individual’s medical records only to the Ohio Department of Job and Family Services, not to the various county departments of job and family services.

Let us begin with a brief description of the system of providing Medicaid in Ohio. As explained by R.C. 5111.01, in part:

As used in this chapter, “medical assistance program” or “medicaid” means the program that is authorized by this chapter and provided by the department of job and family services under this chapter, Title XIX of the “Social Security Act,” 79 Stat. 286 (1965), 42 U.S.C.A. 1396, as amended, and the waivers of Title XIX requirements granted to the department by the health care financing administration of the United States department of health and human services.

The department of job and family services shall act as the single

state agency to supervise the administration of the medicaid program. As the single state agency, the department shall comply with 42 C.F.R. 431.10(e). The department's rules governing medicaid are binding on other agencies that administer components of the medicaid program. No agency may establish, by rule or otherwise, a policy governing medicaid that is inconsistent with a medicaid policy established, in rule or otherwise, by the director of job and family services.¹ (Footnote added.)

Pursuant to R.C. 5111.01(A), the Ohio Department of Job and Family Services (ODJFS) "may provide medical assistance under the medicaid program as long as federal funds are provided for such assistance" to several defined categories of individuals. R.C. 5111.01(B) authorizes ODJFS, "if funds are appropriated for such purpose by the general assembly," to provide "medical assistance to persons in groups designated by federal law as groups to which a state, at its option, may provide medical assistance under the medicaid program." Among those to whom ODJFS may provide medical assistance through the medicaid program are "[a]ged, blind, and disabled persons who meet" the criteria set forth in R.C. 5111.01(A)(2). R.C. 5111.01(D) authorizes the Director of ODJFS to adopt rules that establish standards, procedures, and other requirements with respect to the provision of medical assistance. *See generally* 12 Ohio Admin. Code Chapter 5101:1-39 (eligibility requirements for individuals who are aged, blind or have a disability).

As will be discussed later, however, the responsibility for establishing an applicant's eligibility for the medical assistance program has been assigned to each county's department of job and family services (CDJFS) for all persons living in the county. As suggested by your opinion request, in order to establish an applicant's eligibility for medical assistance, a CDJFS may need to obtain the applicant's medical records. You further indicate that certain health care providers are charging the CDJFS for copies of these requested medical records. The CDJFS, however, questions whether R.C. 3701.741 requires health care providers to provide a CDJFS a copy of such records without charge, when requested for the purpose of establishing an applicant's eligibility for medicaid.

Let us now turn to R.C. 3701.741, which sets forth the duties of health care providers and medical records companies in providing copies of medical records.² R.C. 3701.741(B) establishes a fee schedule, with certain exceptions, setting forth the maximum amounts a health care provider or medical records company may charge for a copy of a patient's medical records.³ R.C. 3701.741(B)(1) establishes one set of fees for copies of records requested by a patient or his personal represen-

¹ *See generally* 12 Ohio Admin. Code 5101:1-37-01 (definition of medicaid program).

² *See generally* R.C. 3701.74(B) (establishing a patient's right of access to, and copies of, certain medical records).

³ *See generally* R.C. 3701.74(A)(5) (defining "health care provider," as that term is used in R.C. 3701.741, as meaning "a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner");

tative, while R.C. 3701.741(B)(2) establishes a separate fee schedule for copies requested by anyone other than the patient or his personal representative.⁴

Among the exceptions to the maximum fee schedules established by R.C. 3701.741(B) is R.C. 3701.741(C)(1)(c), which requires a health care provider or medical records company to “provide one copy without charge” to “[t]he department of job and family services, *in accordance with [R.C. Chapter 5101]*, and the rules adopted under those chapters.” (Emphasis added.) You specifically question whether R.C. 3701.741(C)(1)(c) requires a health care provider or medical records company to provide a free copy of an individual’s medical records to a CDJFS that requests such records for purposes of establishing the individual’s eligibility to participate in the Medicaid program.

We begin our discussion by noting that R.C. 3701.741(C)(1)(c) identifies not only the entity that is entitled to receive the copies of medical records without charge, but also the circumstances in which that entity is entitled to receive those copies. The entity named in R.C. 3701.741(C)(1)(c) is the Department of Job and Family Services, without further qualification or identification to suggest that the term was used to include the various county departments of job and family services, *see generally* R.C. 329.01 (stating, in part, “[i]n each county there shall be a county department of job and family services which, when so established, shall be governed by this chapter”).

Throughout the Ohio Revised Code, the General Assembly has referred to county departments of job and family services by modifying the phrase “department of job and family services” with the word “county.” *See, e.g.*, R.C. 329.01 (creating in each county a “county department of job and family services”); R.C. 5104.34(A)(1) (stating, in part, “[e]ach county department of job and family services shall implement procedures for making determinations of eligibility for

R.C. 3701.74(A)(8) (defining “medical record,” as used in R.C. 3701.741, as meaning “data in any form that pertains to a patient’s medical history, diagnosis, prognosis, or medical condition and that is generated and maintained by a health care provider in the process of the patient’s health care treatment”); R.C. 3701.74(A)(9) (defining the term “medical records company,” for purposes of R.C. 3701.741, as meaning “a person who stores, locates, or copies medical records for a health care provider, or is compensated for doing so by a health care provider, and charges a fee for providing medical records to a patient or patient’s representative”).

⁴ *See generally* R.C. 3701.74(A)(11) (defining the term “patient’s personal representative,” as used in R.C. 3701.741, as meaning “a minor patient’s parent or other person acting in loco parentis, a court-appointed guardian, or a person with durable power of attorney for health care for a patient, the executor or administrator of the patient’s estate, or the person responsible for the patient’s estate if it is not to be probated,” and expressly excluding “an insurer authorized under Title XXXIX of the Revised Code to do the business of sickness and accident insurance in this state, a health insuring corporation holding a certificate of authority under [R.C. Chapter 1751], or any other person not named in this division”).

publicly funded child care”). If the General Assembly had intended that R.C. 3701.741(C)(1)(c) refer to ODJFS and county departments of job and family services or only to county departments of job and family services, it would have been a simple matter to express that intention by specifically naming county departments of job and family services in that statute, as it did in other statutes. *See, e.g.*, note five, *infra*. *See generally Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) (“[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended”); *Lake Shore Electric Railway Co. v. Public Utilities Commission*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, “it would not have been difficult to find language which would express that purpose,” having used that language in other connections).

In addition, various chapters of the Ohio Revised Code contain provisions that address the powers or duties of both ODJFS and the county departments of job and family services. These statutes distinguish between the two by referring to the former as the “department of job and family services” or the “state department of job and family services” and to the latter as the “county department of job and family services.”⁵ Again, had the General Assembly intended that the term “department of job and family services,” as used in R.C. 3701.741(C)(1)(c), refer to county departments of job and family services, it could easily have made that intention clear by inserting the word “county” before “department of job and family services,” as it did elsewhere within the Ohio Revised Code. *See generally Metropolitan Securities Co. v. Warren State Bank; Lake Shore Electric Railway Co. v. Public Utilities Commission*.

We also note that, R.C. 3701.741(C)(1)(c) specifies that the entity named therein is entitled to receive such copies “in accordance with” R.C. Chapter 5101 and rules adopted thereunder. This portion of R.C. 3701.741(C)(1)(c) indicates that the duty of health care providers and medical records companies to provide copies

⁵ *See, e.g.*, R.C. 5101.072 (stating, in part, “[t]he department of job and family services shall collaborate with county departments of job and family services to develop training for appropriate employees of the county departments”); R.C. 5101.58 (stating, in part, “[t]he acceptance of public assistance gives a right of recovery to the department of job and family services and a county department of job and family services against the liability of a third party for the cost of medical services and care arising out of injury, disease, or disability of the public assistance recipient or participant”); R.C. 5104.32(B) (stating, in part, “[e]ach contract for publicly funded child day-care shall specify at least the following: . . . (6) Whether the provider will be paid by the county department of job and family services or the state department of job and family services”); R.C. 5115.20(A) (stating, in part, “[t]he department of job and family services shall establish a disability advocacy program and each county department of job and family services shall establish a disability advocacy program unit or join with other county departments of job and family services to establish a joint county disability advocacy program unit”).

of medical records without charge arises when the department named in R.C. 3701.741(C)(1)(c) requests such copies in the course of carrying out its powers and duties set forth in R.C. Chapter 5101 and related rules.⁶

It has been suggested that, because R.C. Chapter 5101 concerns only ODJFS, the use in R.C. 3701.741 of the language, “the department of job and family services, in accordance with [R.C. Chapter 5101],” can refer only to ODJFS. It has also been suggested that, because R.C. Chapter 329 governs county departments of job and family services, the reference in R.C. 3701.741 to “the department of job and family services, in accordance with [R.C. Chapter 5101],” does not include the county departments. While we agree that R.C. Chapter 329 addresses certain aspects of county departments of job and family services, R.C. Chapter 329 is not the only portion of the Ohio Revised Code that addresses the powers and duties of county departments of job and family services.⁷ Moreover, although R.C. Chapter 5101 imposes upon ODJFS and its Director numerous duties and powers with respect to a variety of programs,⁸ R.C. Chapter 5101 also addresses powers and duties of other entities, including county departments of job and family ser-

⁶ Division (D) of R.C. 3701.741 also states that, “[d]ivision (C) of this section shall not be construed to supersede any rule of the bureau of workers’ compensation, the industrial commission, or the department of job and family services.” We have found no rule adopted by ODJFS under R.C. Chapter 5101 or any other statute that imposes upon all health care providers or medical records companies a duty to provide copies of medical records with or without charge to either ODJFS or a CDJFS for purposes of determining an applicant’s eligibility to participate in the state’s Medicaid program. *Cf. generally* 14 Ohio Admin. Code 5101:3-1-27 (addressing the duty of Medicaid providers to provide records for purposes of audit and review, and stating, in part: “[r]ecords subject to audit and review must be produced at no cost to the department”).

⁷ *See, e.g.*, R.C. 5104.35 (powers and duties of county departments of job and family services concerning publicly funded child care); R.C. 5107.287 (stating, in part, “[t]he county department of job and family services shall establish policies defining ‘good cause for being absent from school’ and specifying what constitutes a day of attendance for purposes of the learnfare program’s school attendance requirement”); R.C. 5115.20 (responsibilities of county departments of job and family services concerning establishment of a disability advocacy program unit).

⁸ *See, e.g.*, R.C. 5101.11(B) (stating, in part, “[a]t the request of any public entity having authority to implement a program administered by the department of job and family services or any private entity under contract with a public entity to implement a program administered by the department, the department may seek to obtain federal financial participation for costs incurred by the entity”); R.C. 5101.161 (stating, in part, “[p]rior to the sixteenth day of May annually, the department of job and family services shall certify to the board of county commissioners of each county the amount estimated by the department to be needed in the following state fiscal year to meet the county share, as determined under [R.C. 5101.16(B)], of public assistance expenditures”); R.C. 5101.30(A) (stating, in part, “[t]he director of

vices, in carrying out several different programs.⁹ Thus, we do not find persuasive the suggestions that R.C. Chapter 5101 addresses only ODJFS or that county departments of job and family services are governed solely by R.C. Chapter 329.

Instead, we believe that the requirement in R.C. 3701.741(C)(1)(c) that a health care provider or a medical records company provide one copy of medical records without charge to “the department of job and family services, in accordance with [R.C. Chapter 5101],” simply limits the purposes for which the Department of Job and Family Services is entitled to receive a copy of medical records at no charge, *i.e.*, when the Department requests such copy in the course of carrying out its functions described in R.C. Chapter 5101.¹⁰

The conclusion that R.C. 3701.741(C)(1)(c) refers to ODJFS, and not to county departments of job and family services, is supported by the rule of statutory construction that “statutory exceptions to the operations of laws should receive a strict interpretation (see *Kroff v. Amrhein* [1916], 94 Ohio St. 282, 286).” *Ohio Boys Town, Inc. v. Brown*, 69 Ohio St. 2d 1, 6, 429 N.E.2d 1176 (1982). See *State ex rel. Keller v. Forney*, 108 Ohio St. 463, 467, 141 N.E. 16, 17 (1923) (“[t]he rule is well and wisely settled that exceptions to a general law must be strictly construed. They are not favored in law, and the presumption is that what is not clearly excluded from the operation of the law is clearly included in the operation of the law”). R.C. 3701.741(B) establishes the maximum fees a health care provider or medical records company may charge for a copy of a patient’s medical records. R.C. 3701.741(C) establishes exceptions from these fees for requests made by particular entities or by a patient or patient’s personal representative “if the medical record is necessary to support a claim under Title II or Title XVI of the ‘Social Security Act,’

job and family services shall adopt rules in accordance with [R.C. Chapter 119 implementing [R.C. 5101.26-.30 (disclosure of information)] and governing the custody, use, and preservation of the information generated or received by the department of job and family services, county agencies, other state and county entities, contractors, grantees, private entities, or officials participating in the administration of public assistance programs”).

⁹ See, *e.g.*, R.C. 5101.27 (setting forth duties of, among others, county departments of job and family services regarding disclosure of information about public assistance recipients); R.C. 5101.37 (authorizing ODJFS, county departments of job and family services, and child support enforcement agencies to “make any investigations that are necessary in the performance of their duties”); R.C. 5101.71(A) (stating, in part, “[t]he county departments of job and family services shall implement [R.C. 5101.60-.71 (adult protective services)]”).

¹⁰ You have not asked, and this opinion does not address either whether there are alternative means that would allow a CDJFS to obtain, without charge, copies of medical records required to determine an applicant’s eligibility to participate in the state’s Medicaid program or whether a CDJFS may otherwise recoup its expenditures for such copies.

49 Stat. 620 (1935), 42 U.S.C.A. 401¹¹ and 1381,¹² as amended, and the request is accompanied by documentation that a claim has been filed.” R.C. 3701.741(C)(1)(e) (footnotes added).¹³ As exceptions to the general rule established by R.C. 3701.741(B), the provisions of R.C. 3701.741(C) must be read narrowly. Accordingly, the phrase “department of job and family services,” as used in R.C. 3701.741(C)(1)(c), must be read as referring only to ODJFS, rather than to ODJFS and county departments of job and family services.

As mentioned in your opinion request, it is the duty of county departments of job and family services, rather than of ODJFS, to establish an applicant’s eligibility for Medicaid.¹⁴ One eligibility criterion for participation in the Medicaid program is that the applicant have a limiting physical factor: sixty-five years of age or older, blindness, or disability. *See generally* [2004-2005 Monthly Record, vol. 6] Ohio Admin. Code 5101:1-39-03, at 1663 (describing limiting physical factor requirement of Medicaid program). Pursuant to 12 Ohio Admin. Code 5101:1-38-02(B)(3), “[v]erification of all eligibility factors is required to establish initial and continuing eligibility for a medicaid program.” Thus, in the course of verifying that a Medicaid

¹¹ 42 U.S.C.A. § 401 (federal old-age and survivors insurance; federal disability insurance).

¹² 42 U.S.C.A. § 1381 (federal supplemental security income for the aged, blind, and disabled).

¹³ In R.C. 5111.01, the General Assembly has described the Medicaid program in Ohio as the “program that is authorized by this chapter and provided by the department of job and family services under this chapter, Title XIX of the ‘Social Security Act,’ 79 Stat. 286 (1965), 42 U.S.C.A. 1396, as amended, and the waivers of Title XIX requirements granted to the department by the health care financing administration of the United States department of health and human services.” Had it intended that a patient or patient’s representative be entitled to medical records at no cost for purposes of Ohio’s Medicaid program, the General Assembly could easily have added to R.C. 3701.741(C)(1)(e) a reference to Title XIX of the “Social Security Act.”

¹⁴ *See* R.C. 5111.012 (stating, in part, “[t]he county department of job and family services of each county shall establish the eligibility for medical assistance of persons living in the county, and shall notify the department of job and family services in the manner prescribed by the department”); 12 Ohio Admin. Code 5101:1-38-01(F) (stating, in part, “[t]he CDJFS is responsible for determining eligibility for all medicaid programs with the exception of the Ohio breast and cervical project as outlined in rule 5101:1-41-05 of the Administrative Code. (1) The CDJFS is responsible for documenting and recording the determination of eligibility, and subsequently informing the AG [assistance group] of the eligibility decision. (2) A determination of eligibility shall be made as soon as possible after the application requirements are complete. (a) The determination of eligibility, including the gathering of any verifications, shall be completed as rapidly as possible within thirty calendar days (forty-five days if a disability determination is required) from the date of application”).

applicant possesses a limiting physical factor, a CDJFS may need the applicant's medical records.

Your question suggests that, because a CDJFS is the entity required to establish a Medicaid applicant's eligibility, including the applicant's possession of a limiting physical factor, it should also be the CDJFS that is entitled to receive a copy of an individual's medical records without charge. We note, however, that there are instances in which ODJFS, in the course of carrying out its powers and duties under R.C. Chapter 5101 and related rules, may also require copies of an individual's medical records. *See, e.g.*, R.C. 5101.47 (authorizing the Director of Job and Family Services, with limitations, to "accept applications, determine eligibility, redetermine eligibility, and perform related administrative activities for," among others, the Medicaid program); R.C. 5101.58 (recovery rights of state and county for cost of medical services); 14 Ohio Admin. Code 5101:3-3-14 (assessment of non-medicare recipients as to appropriate source of long-term care, as set forth in R.C. 5101.75). Because R.C. Chapter 5101 contains provisions under which ODJFS may have occasion to request an individual's medical records, we must assume that the General Assembly was aware of these provisions at the time it enacted R.C. 3701.741 and, therefore, intended to refer to ODJFS, rather than a CDJFS, in R.C. 3701.741(C)(1)(c). *See generally State v. Frost*, 57 Ohio St. 2d 121, 125, 387 N.E.2d 235 (1979) ("[i]t is axiomatic that it will be assumed that the General Assembly has knowledge of prior legislation when it enacts subsequent legislation").

In addition, we note that the duty of a CDJFS to establish a Medicaid applicant's eligibility is not carried out "in accordance with" R.C. Chapter 5101, but, in accordance with R.C. 5111.012, *see* note fourteen, *supra*, and other provisions of R.C. Chapter 5111, as well as the rules enacted to carry out those statutory provisions. *See, e.g.*, 14 Ohio Admin. Code Chapter 5101:3-1 (general Medicaid information). That a CDJFS's request for medical records to verify a Medicaid applicant's eligibility is not a function described in R.C. Chapter 5101 or any rules adopted under that chapter of the Ohio Revised Code indicates that the requirement in R.C. 3701.741 that a health care provider or medical records company provide one copy of an individual's medical records, without charge, to "[t]he department of job and family services, in accordance with Chapter 5101. of the Revised Code and the rules adopted under those chapters" does not refer to county departments of job and family services.

As a final matter, we would like to note that, as an alternative, ODJFS may wish to make the county departments its agents for purposes of obtaining medical records the counties need in order to carry out their statutory duty to establish Medicaid eligibility. Under this possibility, ODJFS would, through the various county departments of job and family services, exercise its right under R.C. 3701.741(C)(1)(c) to obtain a copy of medical records at no charge.

Based upon the foregoing, it is my opinion, and you are hereby advised that, a county department of job and family services is not included within the language "[t]he department of job and family services, in accordance with [R.C. Chapter

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5101] and the rules adopted under those chapters,” as used in R.C.
3701.741(C)(1)(c).