

OPINION NO. 68-032

Syllabus:

1. If the charge or any portions thereof for the care and treatment of patients admitted to the two state tuberculosis hospitals is borne through Medicare, such charge should not be certified to the Auditor of State as being due from the patients' county of residence.

2. In those cases where duplicate payments have been received for the cost of care and treatment of patients admitted to the two state tuberculosis hospitals, reimbursement may be made to the appropriate counties under the provisions of Section 131.06, Revised Code.

To: Roger Cloud, Auditor of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, February 13, 1968

Before me is your recent request for my opinion which raised several questions resulting from the state receiving duplicate payments for the care and treatment of certain patients at the two state tuberculosis hospitals.

Sections 3701.64 and 3701.83, Revised Code, provide that the cost for the care and treatment of patients in said hospitals is to be borne by the county of which the patient is a resident. With the advent of Medicare, billings have continued to the counties though the cost of care and treatment of certain patients has been borne by Medicare.

The resulting duplicate payment has raised the following questions.

1. Should there be certified to the Auditor of State for collection from a county, charges for the care and treatment of patients at the two state tuberculosis hospitals if such costs are borne through Medicare?

2. May reimbursement be made to the counties in those cases where duplicate payments have been received for the care and treatment of patients at said hospitals?

It has been brought to my attention that the designated fiscal intermediary between the two state tuberculosis hospitals and the Federal Government, Blue Cross, bases payment to the hospitals on the actual cost for the care and treatment of a patient, such payment currently being in excess of thirty dollars per patient per day. After receiving from the hospitals the bills for the care of the patients, Blue Cross submits them to the Federal Government for payment by Medicare and then pays the Department of Health, through the hospitals, the money

received. Except for several credits made to counties by the Southeastern Tuberculosis Hospital, all money received through Medicare payments has been placed by the Department of Health in a depository trust pending a determination for the proper disposition thereof.

Sections 3701.64 and 3701.83, Revised Code, set forth the procedure by which a county is charged for the care and treatment of its residents who are patients in the two hospitals in question.

Section 3701.64, Revised Code, provides 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 annually by the director of health, which shall not be more than the average per diem cost of all designated county and district tuberculosis hospitals in the preceding calendar year less the subsidy provided in section 339.43 of the Revised Code. 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.

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

Section 3701.83, Revised Code, contains essentially the same provisions as Section 3701.64, supra, except that it pertains to Southeast Ohio Tuberculosis Hospital.

Payments received from a county are then deposited in the General Reserve Fund.

It should be noted that Sections 3701.64 and 3701.83, supra, both provide that the Director of Health must certify to the Auditor of State the amounts due from each county for the care and treatment of patients hospitalized pursuant thereto.

It is my opinion that a county should not be responsible

for expenses for which remuneration has been made under the provisions of the Medicare Act, or for that portion of a bill which has been so paid. Having been paid, such amount is no longer due, and the Director of Health should not certify it to the Auditor for collection. Future sums paid under the Medicare Act should be credited to the appropriate county so the amount due from such county is no more than the cost of care and treatment which is not covered by Medicare.

A similar conclusion was reached in Opinion No. 1397, Opinions of the Attorney General for 1952, where a question there considered was a county charging a patient the full amount for care and treatment at the Ohio Tuberculosis Hospital without taking into consideration a credit received by the county. At page 328, one of my predecessors stated in part as follows:

" * * * * * * * *"

" * * * The law certainly does not authorize, and in my opinion does not contemplate that the county commissioners should make a profit from a patient by exacting from him the full amount for which the State Hospital has billed him, without giving him the benefit of the credit of \$1.25 per day which they have received from the State. * * *

" * * * * * * * *"

The situation presented by the continued billing to a county without giving that county benefit of payments received through Medicare is analogous.

The next question for consideration is the procedure to be followed in making restitution to the counties in those cases where duplicate payment has been made.

When the Medicare Act became effective and the tuberculosis hospitals began to receive money thereunder, the Director of Health, realizing the problems resulting from duplicate payments, deposited that money in the depository trust fund pursuant to Section 131.05, Revised Code. Reimbursement to a county for payments made by such county, but not in fact due because of the cost of care and treatment being borne through Medicare, may be accomplished under the provisions of Section 131.06, Revised Code, which sets forth the procedure for the withdrawal of money from the depository trust fund, and provides in pertinent part as follows:

" * * * Withdrawals of money from such fund shall be made by requisition on the treasurer of state as custodian of the fund by the authorized official of the office or department wherein the receipt originated. Such requisition shall show the purpose of the withdrawal and such other information as the treasurer of state requires. * * *"

Accordingly, the Director of Health may request the Treasurer of State to return to the appropriate county that

amount for which duplicate payment was made. Such procedure will achieve equitable results in that the state will not have been unjustly enriched and a county will not have borne more than its statutory share of the cost for the care and treatment of its residents in the two state tuberculosis hospitals.

It should be noted that by the enactment of Amended Substitute Senate Bill No. 397, effective December 13, 1967, the General Assembly repealed Sections 3701.60 through 3701.65, Revised Code, and enacted Sections 3335.42 through 3335.44, Revised Code, authorizing the Director of Health to transfer the Ohio Tuberculosis Hospital to the board of trustees of the Ohio State University. By his order of December 13, 1967, the Director of Health did transfer all facilities, equipment, and supplies of said hospital to the University, and pursuant to the provisions of Section 3335.44, Revised Code, it is now the board of trustees of the University who must certify to the Auditor of State the amounts due from each county for the care and treatment of residents of that county.

The above reasoning in avoiding duplicate payments for the care and treatment of patients as it relates to the Director of Health, similarly applies to the board of trustees of the Ohio State University.

Accordingly, it is my opinion and you are advised as follows:

1. If the charge or any portions thereof for the care and treatment of patients admitted to the two state tuberculosis hospitals is borne through Medicare, such charge should not be certified to the Auditor of State as being due from the patients' county of residence.
2. In those cases where duplicate payments have been received for the cost of care and treatment of patients admitted to the two state tuberculosis hospitals, reimbursement may be made to the appropriate counties under the provisions of Section 131.06, Revised Code.