

**OPINION NO. 77-050**

**Syllabus:**

R.C. 5101.51 prevents any payment of funds to nursing homes whose provider agreements have expired and which have been certified by the Ohio Department of Health as being in non-compliance with Federal standards set for participation in the Medicaid program, as set forth in Title XIX of the "Social Security Act", 49 Stat. 620 (1935), 42 U.S.C. §301, et seq., as amended.

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**To: Kenneth B. Creasy, Director, Dept. of Public Welfare, Columbus, Ohio**  
**By: William J. Brown, Attorney General, September 30, 1977**

I have before me your request for an opinion which states as follows:

I would like to request your formal opinion on the authority of this Department to continue payments to various nursing homes whose provider agreements have expired and which have been certified by the Ohio Department of Health as being in noncompliance with federal standards for participation in the Medicaid program. Does Section 5101.51 of the Revised Code prohibit any payment to such a facility?

In responding please include consideration of the following three situations:

- °° The nursing home acquires a state court order mandating continuing payments but does not include the Department of Health, Education and Welfare as the defendant;
- °° Insufficient beds available in the same geographical area in certified facilities to which the recipients in the decertified facility can be transferred;
- °° A recipient in the decertified facility claims that he is not prepared to move and that any transfer would be detrimental to his health.

In that serious budgetary constraints are involved a prompt reply would be appreciated. Thank you for your consideration

R.C. 5101.51 authorizes the Department of Public Welfare to administer the Ohio Medicaid program. That section provides in pertinent part that:

The department of public welfare may provide medical assistance under Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, to recipients and potential recipients of aid under Chapter 5107. of the Revised Code and to recipients of federal aid under Title XVI of such act who would have been eligible for aid under the standards of assistance in effect on January 1, 1972 for the aid of the aged, aid to the blind, and aid for the permanently and totally disabled programs under the former Chapters 5105., 5106., and 5151. of the Revised Code and to other aged, blind, and disabled persons whose expenditures for medical care reduce their income below such standards, as long as federal funds are provided for such assistance . . . (Emphasis added.)

R.C. 5101.51 further provides that:

Expenditures for medical assistance shall be made from funds appropriated to the department of public welfare for public assistance subsidies. Any such program shall conform to the requirements of the "Social Security Act." 49 Stat. 620 (1935). (Emphasis added.)

Thus, this section provides authority for the Department of Public Welfare to cooperate with federal agencies and to participate in a medical assistance program, as long as federal funds are provided for such assistance. Shady Acres Nursing Home, Inc. v. Canary, 39 Ohio App. 2d 47 (1973). In 42 U.S.C. §1396, et seq., provision is made for the creation and operation of the Medical Assistance Program of the Social Security Act, or Medicaid. Further, Title XIX of the Act establishes a comprehensive program of medical care for qualified recipients to be administered

by the states and jointly funded by the Federal and state governments. See 1977 Op. Att'y Gen. No. 77-046. Such a program must comply with the requirements of Title XIX. 42 U.S.C. §1396 (C) gives the Secretary of Health, Education and Welfare authority to cease making such payments to the state agency when he determines that there is a failure to substantially comply with the provisions of the Act. In Ohio, the Department of Health is responsible for certifying that nursing homes are in compliance with Federal standards, and the Department of Public Welfare is designated by R.C. 5101.51 as the single state agency responsible for administering the medicaid program.

42 U.S.C. §1302 establishes the authority of the Secretary of Health, Education and Welfare to promulgate rules and regulations in this area. That section mandates that:

. . . the secretary of Health, Education and Welfare .  
 . . shall make and publish such rules and regulations,  
 not inconsistent with this chapter, as may be necessary  
 to the efficient administration of the functions which  
 [he] is charged under this chapter.

Consistent with this authority, the Secretary has established a vast array of rules and regulations concerning the standards to be maintained and procedures to be followed by the states receiving funding from the federal government under the medicaid program. Specifically, 45 CFR §249.33 (a) (6) requires that a state agency enter into a provider contract with a facility, such as a nursing home, only if such facility is certified as in compliance with all standards contained in the Social Security Act and regulations thereunder. Therefore, a state agency cannot enter into a provider agreement with a nursing home which is found to be in non-compliance with federal standards for participation in the Medicaid program. Since 45 U.S.C. §1396 (a) requires that a state plan for medical assistance provide for agreements with any person or institution providing services, it follows that failure to have such an agreement would prevent the state from being reimbursed for its payments to a non-complying nursing home.

Accordingly, a nursing home cannot continue to receive payments from the state pursuant to R.C. 5101.51 when its provider agreement has expired and when it has been certified to be in non-compliance with federal standards for participation in the Medicaid program. Such payments would constitute assistance which would not be reimbursed "by federal funds . . . provided for such assistance . . ." and thus prohibited by R.C. 5101.51. In addition, these payments would cause the medical assistance program to be in non-conformity with the requirements of the Social Security Act, likewise violating R.C. 5101.51.

Accordingly, it is my opinion that R.C. 5101.51 prevents any payment of funds to nursing homes whose provider agreements have expired and which have been certified by the Ohio Department of Health as being in non-compliance with federal standards set for participation in the Medicaid program, as set forth in Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. §301, et seq., as amended.

Your letter requesting an opinion sets forth three situations that you wish to have considered. The first concerns the effect of a state court order mandating continuing payments to decertified nursing homes in an action where the Department of Health, Education and Welfare has not been joined as a defendant. It is my understanding that there are a substantial number of such court orders currently in effect against the Department of Public Welfare, containing varying terms and provisions. The issue of whether a court order must be obeyed is to be determined on the particular facts and circumstances of each case. At one end of the spectrum, an order issued by a court is not enforceable if the court lacks subject matter jurisdiction. In Re Green, 172 Ohio St. 269 (1961) (rev'd on other grounds; 369 U.S. 389). Even if a court has jurisdiction over the subject matter of a lawsuit, it may not transcend the powers legally conferred upon it. Russell v. Fourth Nat'l. Bank, 102 Ohio St. 248 (1921). Generally, if a court does have jurisdiction over the subject matter, its orders must be followed. Accordingly, an evaluation of the facts and circumstances surrounding each order is required before

an opinion can be rendered upon their validity. Such information is not before me. Because of this circumstance and because this subject is not susceptible to a response of general applicability, further discussion of the concerns raised in the first situation posed in your request would not be proper.

It is my understanding that the second and third fact patterns that you have mentioned involving the sufficiency of facilities for transferred patients and the effects of such transfers upon patients are issues currently pending in a judicial proceeding. The long standing policy of Attorneys General in Ohio regarding the propriety of expressing opinions on matters currently involved in litigation was set forth in 1972 Op. Att'y Gen. No. 72-096:

When a request for an Opinion of the Attorney General presents a question, which is at that time pending in a court proceeding, it would, in almost all cases, be improper for the Attorney General to express his opinion on such a question.

Accordingly, it would not be appropriate for me to render an advisory opinion regarding the second and third situations mentioned in your letter.

Therefore, it is my opinion, and you are so advised, that R.C. 5101.51 prevents any payment of funds to nursing homes whose provider agreements have expired and which have been certified by the Ohio Department of Health as being in non-compliance with Federal standards set for participation in the Medicaid program, as set forth in Title XIX of the "Social Security Act", 49 Stat. 620 (1935), 42 U.S.C. §301, et seq., as amended.