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HOSPITAL SERVICE CORPORATION—SUBSCRIBER TO SERVICE PLAN CONTRACT — ELECTED TO ENTER NON-PARTICIPATING, NON-PROFIT HOSPITAL IN OHIO — ENTITLED TO RECEIVE SAME BENEFITS UNDER SERVICE CONTRACT AS THOSE GIVEN BY PARTICIPATING HOSPITAL — PROVISION IN CONTRACT FOR DIFFERENT BENEFITS FOR SUBSCRIBER WHO ELECTS TO ENTER NON-PARTICIPATING HOSPITAL THAN FOR THOSE WHO ENTER PARTICIPATING HOSPITALS IS INVALID AND IN CONFLICT WITH SECTION 669-4 G. C.

SYLLABUS:

Where a subscriber to a service plan contract issued by a hospital service corporation elects to enter a non-participating non-profit hospital in the State of Ohio, he is entitled to receive the same benefits under his service contract as if he had chosen a participating hospital, and a provision in the service plan contract providing different benefits for a subscriber who so elects to enter a non-participating hospital than for those who enter participating hospitals is invalid as being in conflict with Section 669-4, General Code.

Columbus, Ohio December 21, 1944

Hon. J. Roth Crabbe, Superintendent of Insurance
Columbus, Ohio

Dear Sir:

You have requested my opinion as follows:

"I desire your opinion upon a question arising under the statute for the regulation of non-profit hospital service corporations.

Section 669-4, General Code, second paragraph reads:

'All service plan contracts issued by such corporations under the provisions of this act, shall provide that the subscriber, under such contract, may select for hospital care, any non-profit hospital in the state of Ohio and thereupon shall be entitled to and accorded all benefits contained in the service plan contract.'

The contracts of certain hospital service corporations presently licensed to do business in this state provide hospital service for the subscribers in participating hospitals for a specified period including bed and board in either a semi-private room or ward, general nursing service, x-ray, operating room, routine laboratory service and ordinary drugs and dressings. The payments made to participating hospitals for such services furnished subscribers are fixed by contract and vary according to the costs of the various hospitals.

The contracts with subscribers contain a provision substantially in the above quoted language of Section 669-4 but limit payments to non-participating non-profit hospitals in Ohio to a specified daily rate which is generally less than that paid to participating hospitals rendering similar services. Thus in the usual case a subscriber makes some financial sacrifice if he selects a non-participating non-profit hospital in Ohio.

For your information I enclose a specimen copy of such a subscribers' contract calling to your attention particularly paragraphs 2 and 14. I desire your opinion upon the question whether such contract violates the second paragraph of Section 669-4, General Code, in that it does not accord to the subscriber entering a non-participating non-profit hospital in Ohio all the benefits which he would have received had he elected to enter a participating hospital."

Non-profit hospital service plans can be maintained and operated

only by corporations not for profit, which corporations have a contract with a non-profit hospital or a group of such hospitals to supply hospital care to the subscribers to such plan. The first unnumbered paragraph of the contract form which you have submitted reads:

“This contract entitles the Subscriber, and, if so provided in his contract, his spouse or the members of his family, upon payment of the charges, as provided in paragraph 1 below, to receive hospital service, as this term is defined in paragraph 2 below, from any of the Participating Hospitals, upon and subject to the terms, conditions and limitations hereinafter set forth.”

The term “hospital service” is defined in paragraph numbered 2 of the contract form as follows:

“The term ‘hospital service’, as used herein, is defined to mean receiving a Subscriber into a Participating Hospital or any other hospital as provided herein (upon the recommendation of a physician or surgeon, as provided in paragraph 3 below), and furnishing to such Subscriber, as needed, for not to exceed twenty-one (21) days within a period of one year next following the date of execution of this contract, (a) bed and board in the class of service provided for in his contract, (b) general nursing service, (c) technical x-ray service (excluding professional interpretation), (d) operating room service, including anaesthesia when administered by a salaried employee of the hospital, (e) routine laboratory service, and (f) ordinary drugs and dressings. * * *”

It will be noted that said paragraph numbered 2 requires the recommendation of “a physician or surgeon, as provided in paragraph 3”, in order to make the service corporation liable to furnish hospital service under the contract. Said paragraph 3 reads:

“Hospital service will be rendered to the Subscriber only upon the recommendation of a physician or surgeon who is licensed to practice medicine by the State of Ohio and who is acceptable for practice in the participating Hospital to which such recommendation is directed, and only during such time as the Subscriber is under the treatment and care of such a physician or surgeon.”

Apparently the contract does not entitle the subscriber to hospital

service in a participating hospital unless such service is recommended by a physician or surgeon licensed to practice medicine by the State of Ohio and who is acceptable for practice in such participating hospital. However, the contract also contains a provision authorizing the subscriber to select for hospital care a non-profit hospital in the State of Ohio which is not a participating hospital. This provision is contained in paragraph numbered 14 of the contract and reads:

“Subscribers may select for hospital care, in addition to the Participating Hospitals, any non-profit hospital in the State of Ohio, provided that the hospital selected will accept the Subscriber for the desired hospitalization under the terms of this agreement, and thereupon the Subscriber will be entitled to and accorded all the benefits and obligations contained in this agreement. The Service Association will pay to the hospital so selected the sum of \$6.00 per day for semi-private contract holders and \$4.50 per day for ward contract holders for each day of service rendered not exceeding a total of 21 days; such payment, however, in no event shall exceed the rate paid Participating Hospitals for a corresponding service at the time of such hospitalization, and, in the event that reductions in payments to the Participating Hospitals are made at any time under the provisions of Article IV, Paragraph 4 of the Cleveland Inter-Hospital Agency Contract referred to in Paragraph 12 hereof, payments to other than Participating Hospitals under the provisions of this paragraph shall be subject to a proportionate reduction; provided, however, that if the last sentence of Section 669-4 of the Ohio General Code should at any time, as a separate provision of the Act relating to Hospital Service Associations, be declared invalid, this paragraph shall be considered to be cancelled and of no effect without invalidating any other parts of this contract. This paragraph is inserted herein without prejudice to the right to maintain the unconstitutionality or invalidity of said part of Section 669-4 of the General Code.”

The above paragraph of the contract provides that the service corporation will pay to a non-participating hospital selected by a subscriber the sum of six dollars per day for semi-private contract holders and four dollars and fifty cents per day for ward contract holders for each day of service rendered not exceeding a total of twenty-one days. In the case of participating hospitals, it is provided by the contract that the subscriber shall be furnished the services enumerated in subdivisions (a) to (f), inclusive, of paragraph numbered 2. It is there-

fore obvious that if the non-participating hospital charges more than six dollars in the case of semi-private room patients and four dollars and fifty cents in the case of ward patients for the furnishing of such service enumerated in paragraph numbered 2, the subscriber does not get the same benefits when he elects to enter a non-participating hospital as when he chooses a participating hospital.

Section 669-4, General Code, provides:

“All contracts issued by such corporation to the subscribers to the plan shall constitute direct obligations of the hospital or hospitals with which such corporation has contracted for hospital care, and such contracts may contain provisions rendering the corporation liable only for its own acts and omissions. Such contracts may provide for furnishing hospital service to subscribers in cases of emergency in hospitals which are not parties thereto.

All service plan contracts issued by such corporation under the provisions of this act, shall provide that the subscriber, under such contract, may select for hospital care, any non-profit hospital in the state of Ohio and thereupon shall be entitled to and accorded all benefits contained in the service plan contract.”

You will note that the last paragraph of this section requires that the service plan contract must provide that the subscriber may select for hospital care any non-profit hospital in the State of Ohio. The section further provides that upon such selection of a non-profit hospital the subscriber shall be entitled to and accorded all benefits contained in the service plan contract. This statute does not, in my opinion, require the contract to contain any provision other than that the subscriber may select any non-profit hospital in the State of Ohio. The section provides that, when such selection is made, the subscriber shall be entitled to and accorded all benefits contained in the service plan contract, and it follows therefore that a subscriber who selects a non-participating non-profit hospital in the State of Ohio must be given the same benefits and service as if he had selected a participating hospital. The benefits contained in the service plan contract under consideration are enumerated in paragraph numbered 2 thereof and the right of the subscriber thereto may not be limited to lesser benefits in the event he selects a non-participating non-profit hospital in this state.

It is also worthy of note that in case a subscriber elects to have

more expensive accommodations in a participating hospital than those provided for in the contract, he receives a credit upon such charge of six dollars and seventy-five cents per day in case he is a semi-private contract holder and five dollars and forty cents per day in case he is a ward contract holder. See paragraph numbered 7 of the contract. Presumably, paragraph numbered 14, if valid, would prevent his receiving such sums as a credit in the event he entered a non-participating hospital. Here again the subscriber would not get so much benefit when he elects to enter a non-participating hospital.

Since Section 669-4, General Code, provides that a subscriber who selects a non-participating non-profit hospital in this state shall be entitled to and accorded all benefits contained in the service plan contract, which benefits are fixed by paragraphs numbered 2 and 7 of such contract, the provision attempting to limit the benefits in paragraph numbered 14 when a non-participating hospital is selected is void by reason of the conflict with the statutes. Section 669-2, General Code, provides, among other things, that the Superintendent of Insurance shall issue a certificate of authority or a license to a hospital service plan corporation upon being satisfied that the proposed contract between the corporation and the subscriber is fair and reasonable. A contract which is prohibited by law is certainly neither fair nor reasonable within the meaning of such words as used in this section.

It therefore follows and you are accordingly advised that paragraph numbered 14 of the contract, in so far as it attempts to limit the benefits to be accorded the subscriber who elects to enter a non-participating non-profit hospital in Ohio, is invalid because it conflicts with Section 669-4, General Code.

Respectfully,

THOMAS J. HERBERT

Attorney General