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OFFICIAL OPINION NO. 6

April 6, 1966

**DEPARTMENT OF PUBLIC WELFARE—Federal Insurance
for the Aged. “Medicare.” Social Security Act. Release
of Funds to County Departments.**

Opinion Requested by Mr. Albert Kelly, Administrator, Department of Public Welfare.

In your letter you have called to my attention subchapter XVIII of the Social Security Act, as added July 30, 1965, 42 U.S.C.A. §§ 1395-1395*U* (1965 Supp.). Subchapter XVIII provides a federal insurance program for the aged, which is commonly known as “Medicare.” Under Part A thereof, basic protection against the costs of hospital and related post-hospital services is provided without charge to individuals who are age sixty-five (65) or over and are entitled to retirement benefits under subchapter II of the Social Security Act or under the railroad retirement system, 42 U.S.C.A. § 1395*c*. Subchapter II of the Social Security Act was amended in 1965 to provide that uninsured individuals who have attained the proper age of sixty-five (65), and are not entitled to monthly insurance benefits under that subchapter are also entitled to hospital insurance benefits upon application. See 42 U.S.C.A. § 426(d) and footnote thereto of § 103 of the Social Security Amendments of 1965, Pub. L. 89-97. Deductible amounts which are not paid by the insurance benefits include the first forty dollars (\$40.00) and ten dollars (\$10.00) per day between the sixty-first (61st) and ninetieth (90th) day of hospitalization for in-patient hospital services for each spell of illness; twenty dollars (\$20.00) plus twenty per cent (20%) of the remainder, plus five dollars (\$5.00) for each of the twentieth (20th) to one hundred first (101st) days of out-patient care for each spell of illness, 42 U.S.C.A. § 1395*e*

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(1965 Supp.). This plan is financed solely by taxes collected by the federal government.

Part B of subchapter XVIII establishes a voluntary insurance program to provide medical and other health services as specified therein to persons sixty-five (65) years of age or older who elect to enroll under the program. It is financed both from premium payments of enrollees and from funds appropriated by the federal government, 42 U.S.C.A. § 1395j. In the case of persons who are entitled to receive monthly benefits under subchapter II, § 402 of the Social Security Act or the Railroad Retirement Act of 1937, the monthly premiums are collected by the federal government's withholding the proper amount from the monthly benefit, 42 U.S.C.A. § 1395s. The deductibles under Part B of the statute are the first fifty dollars (\$50.00) plus twenty per cent (20%) of the cost in excess of fifty dollars (\$50.00) in any calendar year, 42 U.S.C. § 1395l.

As you pointed out, 42 U.S.C. § 1395v authorizes the Secretary of Health, Education and Welfare, at the request of a state made before January 1, 1968, to enter into an agreement with the state pursuant to which all eligible individuals in certain coverage groups will be enrolled under the supplementary medical insurance benefits for the aged provided by Part B of subchapter XVIII. The state is given two optional coverage groups, of which I understand you have selected the second as set out in § 1395v (b) (2), which would include all eligible individuals receiving money payments under the State of Indiana's plans approved under subchapters I, IV, X and XIV of the Social Security Act, except for those recipients who are entitled to monthly insurance benefits under subchapter II of the Social Security Act or who are entitled to receive an annuity or pension under the Railroad Retirement Act of 1937. Under this agreement, the State of Indiana or some agency or department or political subdivision thereof must pay the premiums and deductibles for the recipients insured.

The State Department of Public Welfare has determined that enrolling the eligible recipients in Indiana under the Part B insurance program will effect substantial savings for the State of Indiana and its counties in the Department's administration of the Welfare Act of 1936, as amended, Acts

1936 (Spec. Sess.), ch. 3, Burns IND. STAT. ANN., §§ 52-1001—1417, due to the fact that in addition to the premiums paid by or for insured persons, contributions are made from federal funds to the trust fund from which insurance benefits will be paid. It is obvious that the free hospital insurance benefits provided under Part A of subchapter XVIII will also provide a substantial savings for the State of Indiana and its counties, because the counties are presently paying the entire cost of the hospitalization of recipients, with reimbursement from the state for a percentage of the costs.

Since you anticipate that the purchase of such insurance and the payment of the deductibles thereunder will save money rather than cost more money than is presently being spent on the same programs, you do not anticipate a need for any additional funds or appropriations in order to carry out the proposed program. You anticipate that the department will be paying for some, but not all of the services for which it now pays, will be paying for some services in a different manner (through monthly insurance premiums rather than direct payments to providers of services), and will expect thereby that its recipients will receive the same services as they presently receive, but at a lower cost to the state and county.

Payment of medical care for recipients is provided under each one of the Indiana plans which, according to the information you have supplied me, has been approved by the federal government pursuant to federal law and the Public Welfare Act of 1936. These plans, and the applicable statutes, as amended, include:

(1) Old age assistance, §§ 32-51 of the Indiana Act, Burns §§ 52-1201—1220, subchapter I of the Social Security Act;

(2) Assistance to the blind, §§ 52-70 of the Indiana Act, Burns §§ 52-1221—1239, subchapter X of the Social Security Act;

(3) Payments to individuals who are essential to the well-being of dependent children, Act §§ 71-82, Burns §§ 52-1240—1251, Social Security Act, subchapter IV;

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(4) Assistance to disabled persons, Act §§ 82a-82v, as added by Ind. Acts of 1961, ch. 206, Burns §§ 52-1251a—1251v, Social Security Act, subchapter XIV.

The Act limits the sum which may be paid during any calendar month for assistance, but exempts necessary medical care from such maximum limitation, § 34 of the Act, as amended, Burns § 52-1203; § 54, as amended, Burns § 52-1223; § 72, as amended, Burns § 52-1241; § 82c Burns § 52-1251c.

Nowhere in the Public Welfare Act of 1936 is the term "medical care" defined. However, since 1958, subchapters I, IV, X and XIV of the Social Security Act have provided that the Secretary of the Treasury shall pay to each state certain proportions of the assistance paid under the state plan "including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof." See 42 U.S.C. §§ 303, 603, 1203, 1353. The 1965 amendments to the Social Security Act specifically added insurance premiums paid under Part B of subchapter XVIII. See the same sections as contained in the 1965 Supplements to 42 U.S.C.

Since the Welfare Act of 1936 was enacted to take advantage of the benefits of the federal Social Security Act, as reaffirmed by the 1965 amendment to § 14a thereof, Burns § 52-1113a, it appears that the definition of "medical care" as used by the General Assembly must be construed to be at least as broad as that of the same words as used in the federal statute. The State Department has final authority to decide whether medical care awards by the county are sufficient to provide reasonable medical care to the recipient, *e.g.* § 42 of the Act, Burns § 52-1211. Therefore, the State Department of Public Welfare, by rule and regulation made pursuant to statute, may require that each county department buy medical and other health services insurance under Part B of subchapter XVIII of the Social Security Act. See 1961 O.A.G. 249, No. 41. There is no question concerning the payment of deductibles, as the payment of these sums is presently the responsibility of the county departments of public welfare.

However, it appears that it will be necessary for the State Department of Public Welfare to assume the initial responsi-

bility for payment of premiums and deductibles under any agreement with the federal government, contrary to your present practice under three of the state plans.

Title 42 U.S.C. § 139v(f) provides in part:

“ . . . The agreement shall also contain such provisions as will facilitate the financial transactions of the State and the carrier with respect to deductions, coinsurance, and otherwise, and as will lead to economy and efficiency of operation, with respect to individuals receiving money payments under plans of the State. . . .”

The definition of the term “carrier” as used in that portion of the statute includes a group insurer such as Mutual Medical Insurance, Inc. (hereinafter referred to as “Blue Cross”), 42 U.S.C. § 1395u(f) (1). Under § 1395u, the Secretary is authorized to enter into contracts concerning Part B payments with such carriers, and is required to do so to the extent possible when payments for physicians’ services are involved, in order that the carrier

“(1) (A) make determinations of the rates and amounts of payments required pursuant to this part to be made to providers of services and other persons on a reasonable cost or reasonable charge basis (as may be applicable);

“(B) receive, disburse, and account for funds in making such payments; . . .”

You have informed me that Blue Cross has entered into a contract with the Secretary concerning such functions in the State of Indiana under Part B. You have also indicated that both Blue Cross and the local Social Security office, which will be the collection agency for the monthly insurance premiums, will refuse to bill or accept payments separately from each of the ninety-two (92) county departments of welfare in the State of Indiana, and will require that a prerequisite for the signing of an agreement under Part B is the State Department of Public Welfare’s assumption of the responsibility of making the payments to both the Social Security Administration and Blue Cross for the entire Indiana program. Although

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under Part A, a contract with a carrier must be initiated by one or more providers of services rather than by the federal government, see 42 U.S.C. § 1395h, you state that you have been advised that it is likely that Blue Cross will also be the carrier for most or all of the hospitals and other providers of service in the State of Indiana under Part A, and will demand under Part A also that the State Department make payments for and accept billings to all of the county departments.

Therefore, you have requested my opinion concerning the following questions:

- “(1) In order that the State of Indiana participate in the federal benefits provided by Part B of subchapter XVIII of the Social Security Act, may the State Department of Public Welfare order payments of amounts due from the county departments to the federal government or its agents to be made from funds appropriated to the State Department of Public Welfare?
- “(2) May the State Department reimburse the state treasury for such expenditures by withholding the amounts owed by each county from federal and state aid otherwise reimbursable to the counties?
- “(3) May the State and County Departments install a similar payment plan for deductibles which will be due from the county departments to the carrier-agent or providers of services under Part A of subchapter XVIII of the Social Security Act?

(1) The Welfare Act of 1936 was enacted to enable the State of Indiana to take advantage of the provisions for federal aid to the states in the Social Security Act. In § 14 of the Indiana Act, Burns § 52-1113, the State of Indiana accepts all of the provisions and benefits of the federal Social Security Act, and designates the state and county departments of public welfare to administer and to observe and comply with all of the requirements of such Social Security Act and the

several amendments thereto, and the rules and regulations issued thereunder.

There is ample authority provided by the Welfare Act of 1936 for the State Department of Public Welfare to cooperate with the federal government under subsection XVIII. Section 5 of the Indiana Act, as amended, Burns § 52-1104, requires the state department to administer and supervise all public welfare activities of the state. Subsection (h) of § 5 requires the state department to cooperate with the federal Social Security Board created under the Social Security Act and any amendments thereto, and with any other agency of the federal government in any reasonable manner which may be necessary to qualify for federal aid and assistance to persons who are entitled to assistance under provisions of that Act and in conformity with the provisions of the Welfare Act of 1936. Subsection (k) requires the state department to assist other departments and agencies and institutions of the state and federal government when so requested in performing its service under the act, and, under subsection (l) to act as agent of the federal government in welfare matters of mutual concern in conformity with the provisions of the Welfare Act of 1936 and in the administration of any federal funds granted to the state to aid in the furtherance of any such functions of state government. See also § 17 of the Act, Burns § 52-1116.

Section 14a of the Welfare Act of 1936, as added by Acts 1947, ch. 200, § 2, and as amended by Acts 1965, ch. 388, § 1, Burns § 52-1113a reads as follows:

“The state of Indiana hereby accepts the provisions and benefits of the Federal ‘Social Security Act,’ Economic Opportunity Act of 1964 and related laws pertaining to needy and handicapped persons and general public and child welfare as enacted by the Congress of the United States. *The provisions of these acts and related laws shall be construed so as to secure to the state of Indiana and local units of government maximum participation in the benefits of said federal laws.* . . .” (Emphasis added.)

As previously indicated, the federal government and the carrier will require that payments of premiums and deducti-

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bles under Part B be paid by the State Department of Public Welfare to the federal government or carrier if the benefits of subchapter XVIII are accepted by the State. The present procedure, pursuant to statute, for the payment of claims for medical care does allow payments for such care to be made directly to the provider of services. However, such payments are made on warrant of the county auditor. Medical care paid under the assistance to the blind plan is an exception, as that assistance is presently being paid directly from state funds pursuant to § 58, as amended, of the Welfare Act of 1936, Burns § 52-1227.

Section 37 of the Act as amended, Burns § 52-1206, concerns old age assistance, and reads in part as follows:

“. . . Such assistance or medical care shall be paid monthly to the recipient upon warrant of the county auditor, from the county welfare fund, upon a verified schedule of the recipients and the amount payable to each such recipient, prepared and verified by the county director, in accordance with the awards made by the county board: *Provided, however, That in the case of medical care awards only, payment shall be made directly to the person, corporation, association, institution or agency furnishing such services in accordance with the medical plan established by county departments of public welfare.*” (Emphasis added.)

The relevant portions of § 82h, Burns § 52-1251h (disabled persons) are substantially identical.

Section 72, as amended, Burns § 52-1241 (aid to dependent children) provides that payments “may” be made directly to the furnisher of medical care.

The State is required to reimburse the county for sixty per cent (60%) of its assistance, from the state treasury, and is required to transfer to the county forty per cent (40%) of the federal aid received for the State of Indiana, Acts 1951 (Spec. Sess.), ch. 13, § 1, Burns § 52-1219a, and § 2, Burns § 52-1249a; § 82u of Act as added by Acts 1961, ch. 206, § 22, Burns § 52-1251u.

Section 51 of the Act, Burns § 52-1220 (old age assistance), reads in part as follows:

“Claims for state reimbursement under the provisions . . . of this act shall be presented by the county departments to the state department monthly at such time and in such manner as the state department may prescribe. The state department shall certify to the auditor of state the amount so approved, specifying the amount to which each county is entitled and the purpose for which such reimbursement is made. The amount so certified shall be paid from the old age assistance account of the general fund of the state treasury, upon the order of the state department, and upon the audit and warrant of the auditor of state, to the respective county treasurers of the counties entitled thereto. . . .” (Emphasis added.)

Section 81, Burns § 52-1250 and § 82v, as added, Burns § 52-1251v, are substantially identical in the relevant portions thereof.

Section 15 of the Act, Burns § 52-1114, makes the Treasurer of State custodian of any and all money received by the State of Indiana from either congressional appropriations or any other source except county taxes which the state and county departments of public welfare are authorized to collect, receive and administer under the Act. The State Treasurer is to receive the money, pay it into the proper fund or proper account of the general fund of the state treasury and disburse it on order of the State Department of Public Welfare and warrant of the Auditor of the State.

Section 115 of the Public Welfare Act of 1936, Burns § 52-1403, reads in part as follows:

“. . . This act shall be liberally construed in order that its purposes may be accomplished as equitably, economically, and expeditiously as possible. . . .”

Funds for the State Department of Public Welfare for 1965-67 were appropriated as follows in Acts 1965, ch. 191, § 2, p. 404:

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“The appropriations for current obligations are for the purpose of enabling said department to carry out all services as provided in . . . [the Welfare Act of 1936] and all acts amendatory thereof and supplemental thereto. In addition to the above appropriations, all money received from the Federal Government and paid into the State Treasury as a grant or allowance is hereby appropriated and shall be expended by the State Department of Public Welfare for the respective purposes for which such money was allocated and paid to this State. . . .”

In addition to all of the sections of the Welfare Act of 1936 authorizing the state department to cooperate with the counties and with the federal government to receive the full benefits of all federal funds provided by the Social Security Act, the Indiana General Assembly has provided generally for the cooperation of the state and its political subdivisions with the federal government. Acts 1947, ch. 178, Burns 61-1301—1305.

“The state, or any political subdivision thereof, are each hereby authorized and empowered to the full extent authorized by the Constitution of Indiana and not prohibited by law, to accept the provisions of any law of the Congress of the United States of America, or any rule, regulation, order or finding made pursuant thereto, now or hereafter in force, which, upon acceptance, authorizes the state, or any political subdivision thereof, to cooperate with the federal government, or to receive benefits for itself or any of its citizens; and the state, or any political subdivision thereof, is hereby authorized and empowered to do any and all acts, and to make any rule, regulation, order or finding, that may be necessary to cooperate with the federal government or to effectuate the purposes of any such federal law.”

See 1964 O.A.G. 319, No. 49.

Although the language of §§ 72, as amended, and 75 of the Welfare Act of 1936, Burns §§ 52-1241 and 52-1244, literally interpreted, appears to require that payments for medical

care under those sections may be made only on warrant of the county auditor, § 37, as amended, and § 82h, Burns § 52-1206 and § 52-1251h, with their provisos concerning medical care payments, are somewhat ambiguous on that point. It appears that the State Treasurer is custodian of state and federal funds appropriated for the use of and to be paid to the county departments of public welfare monthly for the purposes of carrying out the provisions of the Public Welfare Act of 1936 and the federal Social Security Act. Disbursements are made at the direction of the State Department of Public Welfare. The State Department is authorized to assist both federal and state agencies for the purpose of using benefits under the Social Security Act.

Payments made from this fund for the benefit of county departments, upon proper verification by the county boards, would, in my opinion, constitute payment by the county in compliance with the intent and purpose of the Public Welfare Act of 1936, as amended. The liberal construction and cooperation with the federal government provisions of the Welfare Act and the state-federal cooperation act previously cited provide ample authority for the state department to make such payments when required to receive benefits under Part B of subchapter XVIII of the Social Security Act. Therefore, the answer to your first question is yes.

(2) You have also asked whether the state may reimburse itself for the premiums and deductibles paid on behalf of the counties under Part B by withholding the proper amount from the reimbursement which the county would otherwise receive from the state as state and federal aid, rather than requiring the county auditor to issue a warrant to the state treasurer each month, a part of which would be returned as reimbursement pursuant to statute.

The only purpose payment upon a county auditor's warrant could serve is to insure that the state assume no reimbursement responsibility for amounts not actually paid by the county, see § 124 of the Act, Burns § 52-1412. No such responsibility would be assumed by the State under your proposed plan.

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Since the Legislature intended that the State may act as agent of the counties for the purpose of receiving federal benefits, and specifically provided for a liberal construction of the act, the Legislature could not have intended that the Public Welfare Act of 1936 be strictly construed to require a useless and cumbersome bookkeeping procedure for the county and state departments when changes necessitated by a federal aid statute are made.

The Welfare Act of 1936 does authorize the state department to withhold from a county's reimbursement amounts paid by the state department on behalf of the county pursuant to an agreement signed with the federal government under Part B of subchapter XVIII. See 1937 O.A.G. 188. The answer to your second question is yes.

(3) A liberal construction of the Welfare Act of 1936, as amended, particularly § 115, Burns § 52-1403, requiring a construction of the act which will accomplish its purposes "as equitably, economically and expeditiously as possible," also authorizes the State Department to institute the same initial payment and withholding plan outlined above for payment of deductibles under Part A of subchapter XVIII if Blue Cross or another carrier which the Indiana providers of services select requires initial payment by the State Department. Therefore, the answer to your third question is yes.

My opinion that you may adopt the proposed program is, of course, subject to the availability of state funds for such purpose, and any decision by the State Department of Public Welfare to enter into the program outlined above must, of course, be implemented by proper rules and regulations adopted and promulgated under §§ 4 and 5 of the Public Welfare Act of 1936, as amended, and in compliance with the Social Security Act.