

**Opinion No. 52.**

**Public Welfare—Medical Aid and Hospitalization—County Commissioners—County Physician.**

HELD: 1. Investigators of the county welfare board determine the extent of applicant's need and the portion of the expense for medical aid and hospitalization the applicant is able to bear.

2. Needy individuals whose resources and incomes are such that they can pay for medical aid but not for hospitalization are entitled to patronize the physician of their own choice.

3. The county commissioners have not the power to insist that a relief applicant patronize a certain physician in order to obtain needed hospitalization at county expense.

4. The county physician cannot demand that individuals avail themselves of his services on a condition to granting hospitalization by the county.

April 21, 1939.

Mr. Phil G. Greenan  
County Attorney  
Great Falls, Montana

Dear Sir:

You have submitted three questions concerning medical and surgical care and hospitalization for persons unable to provide such care for themselves.

The conditions under which medical aid and hospitalization may be granted by the county are found in Subsection (b) of Section II, Part II, Chapter 82, Laws of 1937, as amended by Section 12, Chapter 129, Laws of 1939, to-wit:

"An applicant for assistance including medical care and hospitalization shall be eligible to receive assistance only after investigation by the county department reveals that the income and resources are insufficient to provide the necessities of life, and assistance shall be provided to meet a minimum subsistence compatible with decency and health."

and Section VI, Part II, Chapter 82, Laws of 1937, as amended by Section 15, Chapter 129, Laws of 1939, to-wit:

"Medical aid and services and hospitalization for persons unable to provide such necessities for them-

selves are hereby declared to be the legal and financial duty and responsibility of the board of county commissioners, payable from the county poor fund. It shall be the duty of the board of county commissioners to make provision for competent and skilled medical or surgical services as approved by the State Board of Health or the State Medical Association, or in the case of osteopathic practitioners by the State Osteopathic Association, or chiropractors by the State Chiropractic Association. 'Medical' or 'medicine' as used in this act refers to the healing art as practiced by licensed practitioners."

This means that any person who, after investigation by the county department of public welfare, is found to have an income or resources insufficient to provide medical aid or hospitalization required to maintain him in decency and health, the county commissioners are bound to provide medical aid or hospitalization and pay for it from the county poor fund. The investigation may reveal that the applicant's means or resources are such that he can pay for a portion of such medical services needed or that he can pay for all the medical services but has not the means to bear the hospital expense. Each individual case differs and it is the duty of the investigator to determine the extent of the need and the portion of the burden that the applicant is unable to pay. It often happens that the needy person is being employed on W. P. A. and the investigator may decide that the earnings of the W. P. A. employee are such that he can pay for the doctor's services but has not the income or financial resources to also pay for the hospital expenses. Then it is the duty of the board of county commissioners to bear the hospitalization costs. The basic theory of the act is that the county shall bear such portion of the expenses arising out of need for medical attention as the individual himself is unable to bear.

It will be necessary for the county commissioners to furnish both medical services and hospitalization in most of the cases where applicants are receiving general relief. In such cases medical services may be supplied in any manner that the county board

deems best for the welfare of the recipients and the county. Some boards may find that best results are obtained from permitting the individual to choose his own physician. Similarly with hospitalization, one county might get better results from the maintenance of a county hospital while another county found that a system of allowing the individual to go to a private hospital was most effective. But the county welfare board may determine the way in which the requirements of the statute are met, providing that the hospitalization furnished is sufficient and the medical and surgical services offered are approved by the State Board of Health, the State Medical Association, the State Osteopathic Association, or the State Chiropractic Association, as the case may be.

In view of these preliminary observations I shall proceed to answer the questions you have asked.

“(a) Have the county commissioners of this or any other county the legal or the discretionary power to refuse hospitalization to a W. P. A. employee or to a member of his or her family, when and if such an individual desires the services of a physician other than that of the county physician, and when and if such an individual refuses the ministrations of the county physician?”

As I understand the facts, the county board has decided that W. P. A. employees may receive hospitalization at county expense but must personally pay for the services of their physician. If that is the situation, neither the county welfare board nor the county physician has authority to require any such individual to patronize a certain physician. In any case where the investigator finds that the applicant for aid has an income or resources that will enable him to pay for the services of a physician but that the county must pay for the hospitalization, the county board cannot arbitrarily designate the physician for whose services the individual is paying. Any attempt of the county authorities to dictate in this way is a wrongful and illegal act.

“(b) Has the employee of the county, designated as the county physician, the legal power or authority to refuse hospitalization to

such people as referred to in the above, when and if such persons or person desires a physician of their own selection and do not wish the county physician's ministrations?”

In accordance with the previous analysis, the county board cannot force a person to employ a physician not of his own selection and an attempt by the county physician to deprive those entitled to hospitalization of their statutory rights in order to force them to come to him for treatment is an outrageous and unwarranted abuse of authority.

“(c) When and if the county physician so has the power and/or when and if the county commissioners have such discretionary power, may the county physician charge for his ministrations, or must he serve them as gratuitous cases, comparable to the county poor?”

If the individual voluntarily comes to the county physician and is required to pay for the services personally, then the county physician is to be treated as any other qualified medical practitioner and may make a reasonable charge for his services.