

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 15, 1967

To John C. Johnson, Supervisor

Dept. Division of Reimbursement
Mental Health and Corrections

From Courtland D. Perry, Asst. Atty. Gen'l.

Dept. " "

Subject Retroactive Charges for Support of Patients at State Institutions

FACTS:

Prior to September 21, 1963, the maximum rate fixed by the Department of Mental Health and Corrections for board and care at State institutions was \$2.00 per day. Effective on that date, and continuing to the present time, the maximum rate fixed by the Department of Mental Health and Corrections has been \$5.00 per day for the first 60 days of hospitalization and \$4.00 per day thereafter. Effective on the same date were detailed statutes relating to the support of persons at State Institutions which included in substance prior law on the subject, expanded however, to include provisions relating to the administration of the reimbursement function, i.e., the determination of ability to pay and the collection of amounts due for support.

On, or about October 10, 1963 the Department of Mental Health and Corrections forwarded a notice along with the monthly statement for support to all persons then being billed for the support of patients at the Augusta State Hospital, Bangor State Hospital and Pineland Hospital and Training Center, which notice was in language as follows:

"DEPARTMENT OF MENTAL HEALTH AND CORRECTIONS
Room 700, State Office Building
Augusta, Maine

"NOTICE OF CHANGE IN RATE AND ESTABLISHMENT OF A DIVISION OF REIMBURSEMENT

"We take this opportunity to advise you that new legislation affecting the Reimbursement Program in our various institutions became effective September 21. The evaluation of financial statements upon the admittance of patients will now be made in the Division of Reimbursement of the Department of Mental Health and Corrections in Augusta.

"As the person legally liable to pay for the support of a patient now in one of our institutions you will eventually be asked by the Division of Reimbursement to complete a statement reflecting your present financial status. The information contained in this statement will be investigated by the Division of Reimbursement and at that time an evaluation of your ability to pay shall be made and the daily rate for care and treatment shall be adjusted accordingly. We hope, thus, to provide eventually a better service for you in evaluation of persons able to pay and in delin-
eation of the extent of payment.

"As in the past, you will continue to be billed and shall make payment

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directly to the institution in which the patient is receiving care and treatment.

"Effective September 21, the maximum rate is \$5 per patient per day for the first sixty days, and \$4 per patient per day thereafter. It should be understood this is the maximum rate. As in the past, each case will be given individual consideration and evaluation as to ability to pay.

"It has been and will continue to be the policy of this Department that only those who have sufficient financial resources are expected to pay the maximum amount. Others may pay amounts according to their ability.

"If there are any questions, we would be most pleased to have you call or correspond with us.

DIVISION OF REIMBURSEMENT
Department of Mental Health and Corrections
State Office Building
Augusta, Maine"

QUESTION:

Upon a determination that ability existed as of September 21, 1963, to pay the then promulgated maximum rate of \$4.00 per day, has the Department of Mental Health and Corrections legal authority to increase as of that date, charges for the support of a patient at a State institution and to bill therefor, when, at that time; and continuing until the new determination of ability to pay, the institution had billed and had been paid for, support at the prior rate of \$2.00 per day, or less?

ANSWER:

Yes.

OPINION:

Under T., 34, M.R.S.A., 1964, §2512 (enact. P.L., 1963, c. 19, §2; amend. P.L., 1963, c. 426, §1; rep. & repl., P.L., 1965, c. 292, §2) the patient and the spouse, parent and adult child of the patient are made liable for the support of the patient in a State hospital and the Pineland Hospital and Training Center from the date such patient is admitted thereto. The debt arising from such legal liability for support arises from statute, i.e., by operation of law and not from contract, Carpenter, Treasurer of State vs. Coulombe, 145 Me. 400 (1950.)

The Department of Mental Health and Corrections under the same section is precluded from issuing a bill representing charges for support until an investigation is made of the financial condition of the person to be billed, or his financial condition is verified by reliable references, P.L., 1963, c. 426, §1; thus, in the handling of many cases there may very well be a delay, sometimes substantial, before

a bill is received by a legally liable person, but legal liability as provided in the cited statute attaches from the date of admission of the patient, if ability to pay then existed. By necessary implication from language of this section, arises the authority of the Department of Mental Health and Corrections to charge from the date of admission of a patient for his support.

In the case of a patient hospitalized at the time of the increase of the maximum rate payable for the support of persons at State institutions fixed by the Department of Mental Health and Corrections effective as of September 21, 1963, for whom a legally liable person was then paying for support, the Department of Mental Health and Corrections under T., 34, §2512 (formerly R.S., 1954, c. 27, §135 c, subsection II), and under T., 34, §2513 (formerly R.S., 1954, c. 27, §135 c, subsection III), is charged with the responsibility of investigating to determine the ability of such legally liable person to pay more than the amount billed, and at the time of the rate change could not arbitrarily increase the charges to such persons without compliance with the statutes by way of a determination of the ability of such person to pay more.

It is our opinion, that the Department of Mental Health and Corrections can not be estopped from billing the legally liable person for the difference between the amount paid, pursuant to the previous determination of the department of the ability of such person to pay the prior maximum rate, and the new fixed maximum rate, if the ability to pay such latter rate existed, because in furnishing hospitalization at a State institution for which such support claim is made, the State is in the exercise of a sovereign power, State vs. Bean 159 Me. 455 at 458-459 (1963). It is well settled that the State in operating a mental hospital is engaged in a Governmental Function and is in the exercise of a sovereign power in so doing, 18 A Words & Phrases, Governmental Function 297.

Furthermore, the Department of Mental Health and Corrections acting consistently with the spirit of R.S., 1954, c. 27, §135 c (now T., 34, M.R.S.A., 1964, c. 195), to avoid working a hardship against any legally liable person then paying for the support of a patient at a State institution, forwarded the notice set forth in the facts prefacing this opinion to each such person, which notice was couched in terms of "present" ability to pay the new fixed maximum rate and was not couched in terms of futurity or ability to pay at the time the determination might eventually be made; thus, putting each such person on notice that the maximum rate had changed, and that his ability to pay upon determination thereof might subject him to the new maximum rate as of its effective date.

The legal liability of a person for support of a patient at a State institution as set forth above, arises from statute in the operation of a Governmental Function and not from contract and; thus, for that reason and for the further reason that the notice of the rate change was forwarded to legally liable persons, the affirmative defense of accord and satisfaction is, in our opinion, not available to the person who paid for support in accordance with the determination of his ability to pay, prior to the effective date of the new maximum rate, when the Department of Mental Health and Corrections; upon a determination of his ability to pay the new maximum rate bills for the difference between the two.

In summary, it is the opinion of this office, that upon a determination that ability existed as of September 21, 1963, to pay the then promulgated maximum rate

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of \$4.00 per day, the Department of Mental Health & Corrections has the authority to increase as of that date, charges for the support of a patient at a State institution and to bill therefor, when at that time, and continuing until the new determination of ability to pay, the institution had billed and had been paid for, support at the prior rate of \$2.00 per day, or less.


Courtland D. Perry
Assistant Attorney General

Cleared for issuance by the Attorney General on March 29, 1967.