700916.1

WELFARE: Department of Social Services.

MEDICAID: Medical services.

CHIROPRACTORS: Remuneration for medical services under Medicaid Program.

Department of Social Services may legally pay for services of chiropractors for Medicaid under governing state and federal statutes.

No. 4695 September 16, 1970.

R. Bernard Houston, Director
Department of Social Services
Commerce Center Building
Lansing, Michigan

You ask whether chiropractors may be paid for services rendered by them under the Medicaid program.

Your question is prompted by a letter dated October 14, 1969, from the Michigan State Medical Society sent by Dr. Ross V. Taylor, who challenges the validity of the present practice of the Department of Social Services in paying chiropractors for services rendered by them under the Medicaid program (copy of letter attached to your inquiry). As you point out, the doctor's references to statements of HEW Secretary Cohen relied on by the doctor refer to "Medicare" rather than "Medicaid". The section of the Social Security Act referred to by Dr. Taylor pertains to Title XVIII of the Social Security Act (Medicare) rather than Title XIX of the Act, under which Medicaid is made available.

Act 321 of the Public Acts of 1966 amended Sections 26, 27, 35, 57, 66a, 66d and 66g of the Michigan Social Welfare Act, being Act 280 of the Public Acts of 1939, as amended, and also added eight new sections to stand as Sections 105 to 112 of the Michigan Social Welfare Act. Section 105, added by the 1966 Act, and further amended by Act 289, P.A. 1967, provides as follows:

> "The state department (of social services) shall establish and administer a program for medical assistance for the medically indigent under Title XIX of the federal social security act, as amended, and shall be responsible for determining eligibility under this act." M.C.L.A. § 400.105; M.S.A. 1968 Rev. Vol. § 16.490(15).

New Section 106 provides for certain eligibility conditions to be met by applicants for Medicaid. Section 107 indicates the basis on which income as defined in Section 106 shall be disregarded to determine eligibility for Medicaid. Section 108 provides in pertinent part as follows:

> ". . . . A medically indigent person . . . is entitled to medical services enumerated in Section 109(a), 109(c) and 109(e) . . . ." M.C.L.A. § 400.108; M.S.A. 1968 Rev. Vol. § 16.490(18).

New Section 109 provides in pertinent part as follows:

> "(a) Hospital services . . . consist of medical . . . care, together with necessary drugs, x-rays, physical therapy, prosthesis, transportation and nursing care incidental thereto . . .

"(b) An eligible person may receive physician services authorized by the state department. Said services may be furnished in the office of the physician, patients' home, a medical institution or elsewhere in case of emergency. Physician shall be paid reasonable charges for services rendered. Reasonable charges shall be determined by the state department and shall not be more than those paid for in the state for services rendered under Title XVIII of the federal social security act.

"(c) For a person 18 years of age or older, nursing home service . . . to the extent found necessary by the attending physician . . . .

* * * *

"(e) An eligible person may receive other medical and health services as authorized by the state."

Title XIX of the Federal Social Security Act, as amended, may be found at 42 U.S.C. 1396, et seq., 42 U.S.C. 1396(b) provides in pertinent part as follows:

"For purposes of this subchapter in subparagraph (a) the term 'medical assistance' means payment of part or all of the cost of the following care and services . . . for individuals . . . physicians' or dentists' services at the option of the state to individuals not receiving aid or assistance under the state's plan . . . whose income or resources are insufficient to meet all of such cost . . . .

"(5) Physician services, whether furnished in the office, the patient's home, a hospital or a skilled nursing home, or elsewhere;

"(6) Medical care or any other type of remedial care recognized under state law furnished by licensed practitioners within the scope of their practice as defined by state law . . . ."

On November 2, 1966, a member of my staff advised you that chiropractors are clearly physicians performing physicians' services, and that their services constitute medical services as that term is used in Act 321, P.A. 1966.

In *Green v. Rawlings* (1939), 290 Mich. 397, the Michigan Supreme Court held that a chiropractor is entitled to remuneration for the services performed in effecting recovery of certain injuries to an employee where the injured employee was directed to the chiropractor by the employer, and that liability for treatment was governed by the Workmen's Compensation Act since the injury was within the medical field in which the chiropractor is permitted to practice. At page 399, the Court said that the Michigan Supreme Court "has long held that the chiropractor may engage in the practice of medicine (citing cases) . . . ."

In Biennial Report of the Attorney General, 1961-1962, page 454, O.A.G. 4046, I ruled that a "chiropractor is . . . a physician . . . ." to the extent provided by the authorizing act.[1]

---

[1] Act 145, P.A. 1933, as amended, being M.C.L.A. § 338.151, *et seq.;* M.S.A. 1969 Rev. Vol. § 14.591, *et seq.*

In Biennial Report of the Attorney General, 1951-1952, at page 12, No. 1247, the then Attorney General ruled that a lawfully licensed chiropractor is the legal practitioner of a school of medicine recognized by the laws of Michigan under the laws governing public hospitals, and as such is entitled to treat patients in a County Hospital under Act 350, P.A. 1913, as then amended (the Act as now amended is found at M.C.L.A. § 331.151, et seq., M.S.A. 1969 Rev. Vol., § 14.1131, et seq.).

In construing Section 13 of the Act, the Attorney General construed a chiropractor as a "physician" as used in that section. The cases and authorities are collected and discussed in O.A.G. No. 1247.

P.L. 89-97, Title XIX, § 1902(a)(10)(A)(i)[2], a pertinent provision of the Federal Social Security Act, provides in pertinent part that medical assistance thereunder "shall not be less in amount, duration, or scope than the medical assistance made available to individuals receiving aid or assistance under any other such state plan."

Under the above and foregoing authority, it is my view and I advise you, as you have hitherto been advised by members of my staff, that chiropractors are clearly physicians and their services are physicians' services constituting medical services as that term is used in Act 321, P.A. 1966. Therefore, the Department of Social Services may and indeed must pay chiropractors for services rendered by them under the Medicaid Program.

FRANK J. KELLEY,
Attorney General.

700925.1

MENTAL HEALTH: County, liability for care of persons committed to state mental hospitals.

County liability for cost of persons committed to state mental hospitals where change of residence occurs between date of commitment and date of admission.

No. 4689 September 25, 1970.

R. Bernard Houston, Director
Department of Social Services
Commerce Center Bldg.
Lansing, Michigan

You have requested opinion in connection with several questions regarding the liability of the county for the first year's care of persons committed to state hospitals in situations where change of residence has occurred between the date of commitment and the date of admission. Your general question is as follows:

> "Is the county of liability for the first year's care in a state institution the county of residence at the time of commitment or the county of residence at the time of admission?"

---

[2] 42 U.S.C. § 1396a.