



Ohio Elections Commission
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December 19, 1986

ADVISORY OPINION NO. 86-3

Syllabus: Divisions (I) and (J) of Revised Code section 3517.13 are not applicable to medicaid provider agreements entered into by the Ohio Department of Human Services pursuant to Ohio Revised Code 5111.21(A)(1) and 42 C.F.R. 431.107.

TO: Patricia K. Barry, Director, Ohio Department of Human Services:

You have requested an opinion on the following question:

Are divisions (I) and (J) of Revised Code section 3517.13 applicable to medicaid provider agreements?

The medicaid program is established under Title XIX of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C. 301. The state of Ohio's participation in the program is authorized by division (A) of Revised Code section 5111.02. The medicaid program is a federal program, controlled largely by federal laws and regulations, but which the state is responsible for administering within Ohio. In order to be eligible for participation, federal law requires the state to submit for the federal government's approval a comprehensive plan for providing medical assistance to eligible persons. Federal law further mandates that the state plan must provide that "any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability on a pre-payment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(23); 42 C.F.R. 431.51(b). At any given time, the Department of Human Services has between forty-five and fifty thousand provider agreements in effect. Under the medicaid program, the state reimburses medicaid providers using approximately 60 % federal and 40% state funds. The state's participation in the medicaid program is expressly made contingent upon federal funds being provided for such assistance. R.C. 5111.02(A). Currently, on an annual basis, approximately one billion dollars in federal funds are administered by the department. Reimbursement to a medicaid provider may not exceed the reimbursement level authorized under federal law. R.C. 5111.02(C).

In order to be eligible for reimbursement under the medicaid program, a medicaid provider must enter into a provider agreement with the Ohio Department of Human Services. 42 C.F.R. 431.107(b) provides in part as follows:

- (b) Agreements. A State plan must provide for an agreement between the Medicaid agency and each provider furnishing services under the plan

With respect to nursing homes, Ohio Revised Code section 5111.21(A) provides in part that:

In order to be eligible for medical assistance payments, a home shall do all of the following:

- (1) Enter into a provider agreement with the department of public welfare as provided in section 5111.22 of the Revised Code;

Eligibility to enter into a provider agreement is contingent upon possessing a valid license, if one is required by law, and agreeing to comply with all state and federal laws and rules regarding the medicaid program. R.C. 5111.06(D); R.C. 5111.21(A)(2) and (3); Ohio Admin. Code 5101:3-1-55(A). The department may not refuse to enter into a provider agreement for any other reason, except a prior failure to comply with laws and regulations of the program or fraudulent activity.

Who is eligible to receive medical assistance, who is entitled to enter a medicaid provider agreement, what services may be reimbursed and the amount of the reimbursement are all largely governed by federal law. The role of the state in entering into provider agreements, is essentially ministerial. The program is for the benefit of persons eligible for medical assistance. The provider agreement is a third party beneficiary contract. It provides the vehicle for the state and federal governments to provide medical assistance to individuals.

Divisions (I) and (J) of R.C. 3517.13 apply to contracts that are "awarded" by the state or a political subdivision. The choice of the word award by the General Assembly would seem to imply that some deliberative process is involved or that at a minimum the agency or department has the discretion on whether to enter the contract. The word "award" is defined as to give or assign after careful consideration. Black's Law Dictionary (5th ed. 1979); Webster's Third New International Dictionary (unabridged, 1971). As discussed in this opinion, the state lacks discretion on whether to enter into a provider agreement.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission that divisions (I) and (J) of Revised Code section 3517.13 do not apply to medicaid provider agreements entered into by the Ohio Department of Human Services pursuant to Ohio Revised Code 5111.21(A)(1) and 42 C.F.R. 431.107.


Larry H. James, Chairman