

**OPINION
61-177**

September 13, 1961 (OPINION)

PUBLIC WELFARE

RE: Medical Assistance for Aged - Fees

Re: Medical Assistance for the Aged

This is in reply to your letter of September 1, 1961, concerning the above named topic.

You state the Public Welfare Board currently negotiated with the North Dakota State Medical Association and the North Dakota Hospital Association as to fees which the Public Welfare Board would approve for payment of medical and hospital care for any and all welfare cases for which medical and hospital care was authorized by the county welfare boards. These fees are to be allowed for General Assistance, Old Age Assistance, Aid to the Blind, Aid to Dependent Children, and Aid to the Permanently and Totally Disabled, which, at the time negotiations were conducted, covered all of the categories of assistance and all of which were approved only on the basis of need.

The 1961 session of the Legislative Assembly enacted Chapter 302 of the 1961 Session Laws which included an additional program of relief known as Medical Assistance for the Aged. The additional program of relief provided for medical needs to otherwise eligible applicants who do not have "sufficient income or other resources to provide for necessary medical and hospital care and treatment."

You further note the provisions of Section 28 of Chapter 302 of the 1961 Session Laws which provide:

PAYMENT FOR SERVICES. The public welfare board is authorized to negotiate to pay dispensers of medical services according to the usual and customary fees being charged in the local community for services rendered to persons of comparable economic status. Should the board contract with private agencies or carrier for all or part of such medical services, it is authorized to make payment direct to such agencies or carriers."

Based upon the above facts and statutes, you ask the following questions:

1. Is it mandatory that the Public Welfare Board must negotiate for a separate fee schedule apart from the other programs for the Medical Assistance for the Aged category?"
2. Is there any legal reason why the Public Welfare Board must negotiate for a separate fee schedule apart from the other programs for the Medical Assistance for the Aged category?"

In reply to your first question, the provisions of Section 28 of Chapter 302 of the 1961 Session Laws authorize the Public Welfare Board to negotiate. In this connection we also note the pertinent provisions of Section 3 of this Act:

This Act shall be administered on a fee for services basis to dispensers of medical services, according to consistent regulations adopted for that purpose. The public welfare board may contract with private agencies or carriers to cover part or all of the benefits specified herein, provided, that no contract with a private agency or carrier shall deny the patient freedom of choice of doctor or hospital or other vendors of medical services."

The provisions of Sections 28 and 3, quoted above, indicate it is not mandatory that the Public Welfare Board negotiate with the medical association. These sections only provide authorization for such negotiation and contract. We have not seen the result of the negotiations with the North Dakota State Medical Association and the North Dakota Hospital Association and are therefore unaware of the provisions of any agreement which may have been entered into. However, we do not believe the State Medical Association, the State Hospital Association, or the Public Welfare Board is bound by any such agreement insofar as Medical Assistance to the Aged is concerned. We reach this conclusion because we presume that at the time the negotiations were entered into Medical Assistance to the Aged was not considered. Since it was not a part of the negotiations any fee schedule arrived at is not binding on any of the parties insofar as Medical Assistance to the Aged is concerned. If, of course, the agreement provides the schedule to be binding on all the parties as to any future assistance programs it would then include Medical Assistance to the Aged.

Our answer to your first question is it is not mandatory that the Public Welfare Board negotiate with the medical association. However, as stated above, if no agreement is reached with the medical association, we do not believe the fee schedule adopted for other types of assistance is binding upon the medical association unless specifically provided for in such agreement insofar as Medical Assistance to the Aged is concerned. If agreement is not reached by negotiation, the Public Welfare Board must then pay as billed for services rendered, providing the bill is reasonable.

In reply to your second question, we refer in part to our reply to your first question. Unless further negotiations are entered into, we do not believe the medical association or the hospital association is bound by the existing fee schedule insofar as Medical Assistance to the Aged is concerned. It may well be that the existing fee schedule for other public welfare programs should also apply to the Medical Assistance for the Aged program. However, this is a matter of negotiation and agreement between the parties involved. We presume it would be advisable to have some form of agreement with the dispensers of medical services for Medical Assistance to the Aged as well as for the other assistance programs. However, this is a matter of policy to be determined by the Public Welfare Department.

Apparently, the contention has been made that due to the provisions

of Section 28 of Chapter 302 of the 1961 Session Laws the Public Welfare Board must negotiate with the dispensers of medical services and provide for a higher schedule of fees for recipients of Medical Assistance to the Aged than for the other categories of relief. With this contention, we cannot agree. Insofar as the higher fee schedule is concerned, Section 28 does provide for the payment of "the usual and customary fees being charged in the local community for services rendered to persons of comparable economic status." We can find no provisions in the other assistance programs which require a fee less than the "usual and customary fees being charged in the local community for services rendered to person of comparable economic status." We do not have any information or knowledge concerning the fees paid in the other assistance programs. It is possible that they are less than the usual customary fees in that community. In such case the matter is open to negotiation between the Public Welfare Board and the dispensers of medical services. Whether the fees for other assistance programs are less than the usual and customary fees charged in the local community concerned is a question of fact and not one of law. However, we do not believe that the language of Section 28 of Chapter 302 of the 1961 Session Laws in and of itself requires a higher schedule of fees for recipients of Medical Assistance to the Aged than for the other categories of relief. As stated above, this is a question of fact and not one of law.

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