



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

June 24, 1988

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 88- 85

Thomas C. Owens
General Counsel
Department of Social and Rehabilitation Services
Docking State Office Building, 6th Floor
Topeka, Kansas 66612

Re: Public Health Service Act--Community Mental Health
Services--Requirement of Provision of Matching Funds

Mentally Ill, Incapacitated, Dependent
Persons--Social Welfare--Social Welfare Fund;
Disbursements

Synopsis: 42 U.S.C. 290aa, Part C, Sec. 523b(1) prohibits
the use of federally provided amounts as a
non-federal match contribution. Once a recipient
provider has properly received Medicaid
reimbursement funds and is free to expend them in
any legally permissible manner, those funds become
the freely alienable property of that recipient.
Thus, such a recipient and not the federal
government provides the funds which may thereafter
be used to match a grant pursuant to 42 U.S.C.
290aa, Part C, Sec. 523(a). Cited herein: 42
U.S.C. 290aa, Part C, Sec. 523; 42 U.S.C.A.
1396; 42 C.F.R. 74.53; 42 C.F.R. 433.45; K.S.A.
39-701, 39-717, 75-3301, 75-5301; K.A.R. 30-5-58.

* * *

Dear Mr. Owens:

As general counsel for the Kansas State Department of Social and Rehabilitation Services, you request our opinion on the legality of applicants using federal Medicaid reimbursement as part of the state match. This state match is required in order to qualify for federal grant funds. The State of Kansas recently received \$275,000 from the United States Department of Health and Human Services pursuant to the Stewart B. McKinney Homeless Assistance Act for Community Mental Health Services. 42 U.S.C. 290aa, Part C, Sec. 521 et seq. Subsequently, three Kansas applicants for these funds included funds received as provider reimbursement from Medicaid as part or all of their required match.

42 U.S.C. 290aa, Part C, Sec. 521 et seq. is designed to assist the state in providing community health services to homeless mentally ill individuals. 42 U.S.C. 290aa, Part C, Sec. 523(a) establishes the matching fund requirements:

"(a) the secretary may not make payments under section 521(a) to the State:

. . .

"(2) unless the State agrees that the State will make available, directly or through donations from public or private entities, non-Federal contributions toward such costs in an amount equal to not less than \$1 (in cash or in kind under subsection (b)) for each \$3 of Federal funds provided in such grant."

42 U.S.C. 290aa, Part C, Sec. 523b(1) establishes what may be used as state matching funds:

"(1) Non-Federal contribution required in subsection (a) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions."
(Emphasis added).

Moreover, federal regulation further limits the type of funds that may be used as a match in obtaining federal grant moneys:

"[E]xcept as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant." 42 C.F.R. 74.53 (a) (1); See also 45 C.F.R. 433.45.

Federal statutes and regulations preempt state law to the extent that state law conflicts with federal law. American Properties, Inc. v. S.R.S., 241 Kan. 607 (1987). 42 U.S.C. 290aa, Part C, Sec. 523(1) clearly prohibits using "[a]mounts provided by the Federal Government" as part of the applicants' required non-federal contribution. Thus, the issue becomes the nature of Medicaid payments or reimbursement funds applicants intend to use.

Medicaid is a welfare program and a component of the federal social security law. 42 U.S.C.A. 1396(a) et seq. Under this law the federal government makes grants to the states. Presently, the respective federal and state contribution percentages are roughly fifty percent. 51 Fed. Reg. 39,915 (1986). At the federal level Health Care Financing Administration (HCFA) of the United States Department of Health and Human Services (HHS) administers Medicaid. A state is not obligated to participate in the Medicaid program. However, once a state voluntarily elects to participate, the state must comply with federal standards. Country Club Home, Inc. v. Harder, 228 Kan. 756, 763 (1980).

Kansas adopts and administers the Medicaid program pursuant to K.S.A. 39-701 et seq., 75-3301 et seq., 75-5301 et seq., and K.A.R. 30-5-58 et seq. K.S.A. 39-717 et seq. provides for criminal penalties if assistance is improperly obtained or used. Additionally, Medicaid moneys received from federal authorities remain subject to applicable federal restrictions. Once Medicaid funds are properly disbursed and received by local recipients, those recipients must comply with any existing restrictions placed upon use of these funds. Once all federal and state restrictions become inapplicable, the funds become the freely alienable property of the possessor.

Obviously, the federal government represents the initial source of federal Medicaid funds. 42 U.S.C. 290aa, Part C, Sec. 523b(1) clearly prohibits using "amounts provided by

the Federal Government" as a non-federal contribution. Co-mingling these moneys with funds provided by the state does not alter the fact that the federal government initially supplied some of the funds. Nor does it relieve recipients of any duty to comply with applicable federal mandates.

However, once Medicaid funds have been paid to a service provider, that provider is free to expend those moneys in any legal manner. See K.S.A. 39-710. For example, a doctor who receives Medicaid reimbursement funds as payment for services may subsequently use those funds to make a house or car payment. Likewise, a provider institution receiving Medicaid reimbursement funds as payment for services rendered may subsequently spend those funds on equipment, supplies, etc. Such funds may in some instances be used by a recipient provider to pay taxes, thus placing the funds once more in the hands of the government. The amounts thus expended become part of our economic system and its cash flow. The federal or state government no longer controls the funds or their use. The recipient provider becomes the legal owner of the funds.

42 U.S.C. 290aa, Part C, Sec. 523b(1) prohibits use of federally provided amounts as a non-federal contribution. It does not prohibit use of funds that may have been at any time provided by the federal government. Many funds may have conceptually been at one time provided by the federal government. At the point the federal government releases all its control over the funds, the funds are no longer legally connected with the federal government. If a recipient provider has properly received Medicaid reimbursement funds and is free to expend those funds in any legally permissible manner, such funds become the freely alienable property of that recipient. Thus, such a recipient may expend the funds and in doing so become the provider of the funds. Therefore, it is our opinion that these funds may be used to match a grant pursuant to 42 U.S.C. 290aa, Part C, Sec. 523(a).

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General