

1981 WL 158074 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 14, 1981

*1 Honorable Richard W. Riley
Governor
State of South Carolina
The State House
Columbia, South Carolina 29211

Dear Governor Riley:

You have asked this Office to render an opinion on the following question:

Under Act No. 651 of 1978, as amended, is the Department of Social Services authorized to reallocate funds within an appropriated line item without prior approval of the Joint Appropriations Review Committee and the Governor?

The line item referred to is in the 1981-82 Appropriations Act, Section 41, Part III, Paragraph D, entitled 'Medical Assistance Program' and is line 2.a. Assistance Payments-DDS. This line item is the sum of money from which Medicaid benefits are paid to providers of medical services to the poor such as physicians, hospitals, and nursing homes, and is predominantly federal funds.

It is evident from the question presented that the issue here involves changes, not to the amount of money appropriated in this line item, but to the amounts allocated to various service categories for which the total sum had previously been appropriated.

The pertinent part of Section 18 of the Permanent Provisions is Paragraph B, which amends Section 4 of Act 651 of 1978. Section 4, in its amended form, requires that all state agencies obtain approval from the Governor and the Joint Appropriations Review Committee (hereinafter 'the JARC') prior to receiving and expending any funds 'with the exception of appropriations from the general fund . . .'. That one of the types of funds contemplated by this provision is federal funding is reflected by the fact that the second paragraph in the new Section 4 begins 'Proposals for the expenditure of federal funds shall originate with the agency . . .'. However, even though the majority of the funds making up the \$232,653,591.00 appropriated in line 2.a. are federal funds, they are in an appropriated line item already enacted by the General Assembly. They are neither 'new funds' nor extra funds not appropriated by the General Assembly, nor is a new federal fund grant program involved.

It might be argued that a redistribution of funds which were formerly federal funds before their appropriation to the State agency is a 'change in federal program structure which would affect (a) state agency program' which would be within the purview of Paragraph C of Section 18, Part II, of the 1982 Appropriations Act. This portion of Section 18 sets up the requirement that such changes go through the Governor to the JARC as his recommendation [See Paragraph C.(1)]. This portion of Section 18 also requires review of:

(2) Any changes or proposed changes in the funding of such programs including, but not limited to, changes in funding levels, consolidations, distribution and allocation;

Since it would appear that a reallocation of Medicaid funds to different providers might be viewed as within that paragraph it may be argued that such a reallocation would require the participation of the Governor and of JARC. However, reading Paragraph C of Section 18 as a whole, it is evident that after the JARC has received the Governor's recommendations on such matters as described above and reviewed them, the JARC ' . . . shall notify appropriate legislative committees as to reconciliation of federal program funding changes in the state appropriation process.'

*2 The whole of Act 651, as amended, makes it clear that the types of changes envisioned are those changes which would require transfer of funds to other programs within the agency, allocation of new funds, or reallocation or distribution of all or part of such line item funds to another agency; in short, effect a change not provided in the Appropriations Act. Since the amount of the line item set aside for Medical Assistance services has already been appropriated, it is our opinion that Act 651 would not be applicable to reallocations internal to that line item. The operation of Paragraph C of Section 18, Part II, does not fit the situation which is the basis of the question presented because the changes envisioned by the question do not require a change in or appropriation of additional funds. The apparent intention of the General Assembly that this line item remain flexible for managerial decision by the agency is further illustrated by the fact that the budget proposal as originally submitted by DSS included the item for Assistance Payments divided into components or allocations, but the Appropriations Act as passed consolidated the total amount in a single line item.

Also pertinent to the question is that part of the 1981-82 Appropriations Act known as the 'Medicaid Proviso' which is found on page 436 of the Appropriations Act and which reads as follows:

Provided, Further, That no reduction shall be made in the Medicaid (Title XIX) Program services in order to operate within appropriated funds without the review and approval of the Health Care Planning and Oversight Committee, or such other committee as may be given the authority under other appropriate legislation. Any such reductions must be approved by the Department of Social Services Board prior to submission to the appropriate legislative Committee.

It is our opinion that this 'Medicaid Proviso' is applicable to the type of proposed reallocation within a line item appropriation as contemplated by the question presented. Since, as is stated in the letter of request, a reduction in services must occur as a result of a reallocation of the funds between providers, it is clear that the language '. . . no reduction shall be made in the Medicaid (Title XIX) Program services . . . without . . . approval . . .' makes this proviso applicable and the receipt of approval by the Health Care Planning and Oversight Committee mandatory upon the agency. In this way, the legislative branch retains oversight of implementation of the appropriated program by the agency.

Of course, in interpreting any statute the test and goal is determining the intent of the legislature. [Helfrich v. Brasington Sand & Gravel Co.](#), 268 S.C. 236, 233 S.E.2d 291 (1977). And it is the opinion of this Office that the legislature intended that it retain—through the 'Medicaid Provision'—a degree of control over the distribution of medical services as long as the funds allocated remain within an already appropriated amount.

*3 In conclusion, it is the opinion of this Office that the Department of Social Services is legally authorized to reallocate funds within an appropriated line item without the approval of the Governor and the JARC as long as it complies with the 'Medicaid Proviso' of the 1981-82 Appropriations Act by obtaining the approval of the Health Care Planning and Oversight Committee. Sincerely,

Frank K. Sloan
Deputy Attorney General

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