



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

April 12, 1951

Hon. Geo. W. Cox, M.D.
State Health Officer
State Department of Health
Austin, Texas

Opinion No. V-1168

Re: Authority of the State
Department of Health
to defray the cost of
diagnostic procedures
to determine eligibil-
ity of children for
crippled children's
care and treatment.

Dear Dr. Cox:

Your request for an opinion relates to the authority of the Crippled Children's Division of the State Department of Health to finance diagnostic procedures to determine if a child comes within the provisions and intent of House Bill 754, Acts 49th Leg., 1945, ch.216, p. 298 (Art. 4419c, V.C.S.), without first having procured a certificate of the county judge to the effect that the child's parents are financially unable to provide the care and treatment embraced in the act.

The Federal Government has provided a grant to States for the purpose of enabling each State to extend and improve services for locating crippled children and for providing medical, surgical, corrective, and other services and care, and facilities for diagnosis, hospitalization, and aftercare for children who are crippled or who are suffering from conditions which lead to crippling. (42 U.S.C.A. §§ 711-714.)

Pursuant to the crippled children's program above referred to, the Federal Security Agency has promulgated certain rules and regulations, the pertinent regulation for the purpose of this discussion being Section 200.9,¹ which is as follows:

1. 42 Code Fed. Regs. Sec. 200.9 (1949 Cum.Pocket Supp.)

"State Plans for Crippled Children's Services shall provide that the diagnostic services under the plan will be made available within the area served by each diagnostic center to any child (a) without charge, (b) without restriction or requirement as to the economic status of such child's family or relatives or their legal residence, and (c) without any requirement for the referral of such child by any individual or agency."

In the furtherance of this program, an act was passed by the Texas Legislature creating a physical restoration service for crippled children in the State Department of Health. Art. 4419c, supra. This act makes provisions for locating, examining, and physically restoring crippled children of the State. Section 3 of Article 4419c empowers the Crippled Children's Division to "take census, make surveys and establish permanent records of crippled children . . . and to take such other steps as may be necessary in order to accomplish the purposes of this Act." As to care and treatment of crippled children, Section 4 of the act places a limitation thereon by requiring the county judge of the county in which the child resides to certify to the State Department of Health, upon sworn petition of the parents, that the parents are financially unable to provide such care and treatment. It is further provided that the county judge must also certify that one or more physicians regularly practicing under the laws of the State of Texas have examined the child and have recommended such child as coming within the provisions and intent of this act. Section 8 of the act empowers and directs the State Department of Health to take all action necessary to accomplish the purposes provided or implied by the act and to cooperate with public agencies, Federal, State, county, and local, and with private agencies and individuals interested in the welfare of crippled children.

In addition to authorization contained in Article 4419c, supra, State participation in this program is authorized by Section 2, Subdivision 10, of the General Appropriation Act (H.B. 322, Acts 51st Leg., R.S. 1949, ch.615, at p. 1345), which states that the proper officer or officers of any State departments, bureaus, divisions, or State agencies are authorized to make application for, accept any gifts, grants, allotments, or funds from the United States Government or educational or health projects and programs to be used on State cooperative and other projects and programs in Texas. The statute further provides that all of such funds shall be deposited in the

State Treasury and are appropriated to the specific purpose or purposes authorized by the grantor, and shall "be withdrawn from the State Treasury subject to limitations placed on this Act except if contrary to the purposes for which the funds were received."

As noted above, in order for a child to be accepted for treatment, the county judge must certify that the child's parents are financially unable to provide the necessary care and treatment, and must further certify that one or more physicians have examined the child and have recommended him as coming within the provisions and intent of the act. Art. 4419c, Sec. 4. You state that in numerous cases a physician cannot make a definite diagnosis for determining whether the child comes within the provisions and intent of the act, nor can he determine the extent of crippling, without various types of laboratory tests and X-rays. Your inquiry is whether the State Department of Health may pay for these preliminary diagnostic examinations without securing the certificate of the county judge.

It is our opinion that a necessary diagnosis by laboratory tests or otherwise may be paid for by the State Department of Health without the necessity of obtaining a certificate of the parents' financial inability from the county judge. The limitation contained in Section 4 of Article 4419c is a requirement that a certificate of financial inability be obtained only as a prerequisite to accepting the child for care and treatment and does not relate to the preliminary diagnosis. This conclusion is borne out by the provisions of Sections 3 and 8 of Article 4419c, as well as by the specific requirements of the Federal regulation quoted above. Moreover, the county judge could not certify that a parent was financially unable to provide care and treatment in the absence of an adequate diagnosis as to the nature of the crippling condition.

SUMMARY

The Crippled Children's Division of the Texas State Department of Health is authorized by House Bill 754, Acts 49th Leg., 1945, ch.216, p.298 (Art. 4419c, V.C.S.), to finance diagnostic procedures ordered by practicing physicians to determine if a child comes under

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the provisions of the act without securing a certificate of the county judge that the child's parents are financially unable to provide the needed care and treatment. This limitation contained in House Bill 754 is only applicable to care and treatment of crippled children and is not a limitation relating to diagnostic procedure.

APPROVED:

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BW:mw

Yours very truly,

PRICE DANIEL
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By 
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