

CLEM R. CANNON
AUDITOR, KARNES COUNTY
KARNES CITY, TEXAS 78118

IO #16887
MBJ

July 24, 1992

The Honorable Dan Morales
State Attorney General
Capitol Offices
Austin, Texas

RQ 420

RECEIVED

AUG 04 92

Opinion Committee

Dear Sir:

I am requesting an Attorney General's opinion on who is responsible for paying medical bills for prisoners incarcerated in Karnes County jail. Karnes County is a legally constituted hospital district. I have previously written and requested an opinion from Lt. Governor Bob Bullock's office, a copy of which is enclosed.

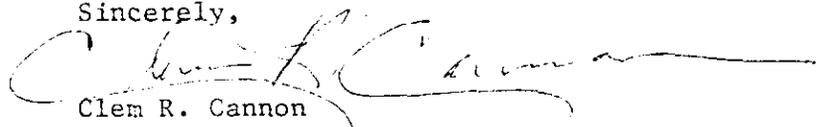
In conferring with Senator Ken Armbrister about this problem, Sen. Armbrister recommended that I contact the Attorney General and Lt. Governor offices. I spoke to Camille Miller with the Lt. Governor's staff about this problem. I have been in contact with personel in the office of Will Pryor and Madeline Johnson concerning this problem also.

The Karnes County Attorney, Mr. John Berry, and I have been in disagreement concerning who is responsible for paying medical bills incurred by prisoners in the Karnes County jail. I am also enclosing copies of statues given me by the County Attorney, to support his opinion of who is responsible for paying medical bills incurred by prisoners incarcerated in Karnes County.

May I state again that Karnes County is a hospital district and it is my understanding that the hospital district would be responsible for paying any bills incurred for prisoners in Karnes County jail. Enclosed is a copy received by Karnes County of the hospital district's indigent health care policy.

We will await your opinion concerning this problem and wish to thank you for your assistance.

Sincerely,



Clem R. Cannon
Karnes County Auditor

CRC/am

Enclosures

cc: The Honorable Ken Armbrister
Business/District and Capitol Offices

The Honorable Bob Bullock
Lieutenant Governor



County of Karnes

JOHN W. BERRY

COUNTY ATTORNEY

KARNES CITY, TEXAS 78118

512-780-3736

May 14, 1992

Mr. Clem Cannon
County Auditor
Karnes County Courthouse
Karnes City, Texas 78118

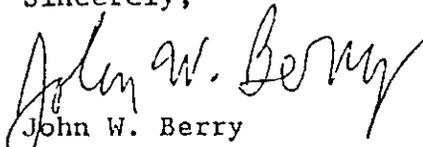
Dear Mr. Cannon,

Enclosed please find copies of Section 61.022, 61.028, and 61.054 of The Health and Safety Code, relating to Indigent Health Care.

As noted by the provision of section 61, the County is the payor of last resort and is responsible for providing health care to eligible County residents. In addition, the County is responsible for the health of individuals incarcerated in the County jail and should pay for all prescriptions and medical treatment which is not covered by the County Hospital. The County can be held responsible in a civil suit for failure to provide necessary medical care for inmates of the County jail.

In view of these facts I would recommend that all appropriate medical bills or prescriptions be paid including the one I have enclosed with this letter.

Sincerely,


John W. Berry
County Attorney

JWB/sc

§ 61.026

HEALTH AND SAFETY CODE
Title 2

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.
Vernon's Ann.Civ.St. art. 4438f, § 2.05.

§ 61.027. Change in Eligibility Status

(a) An eligible resident must report any change in income or resources that might affect the resident's eligibility. The report must be made not later than the 14th day after the date on which the change occurs.

(b) If an eligible resident fails to report a change in income or resources as prescribed by this section and the change has made the resident ineligible for assistance under the standards adopted by the county, the resident is liable for any benefits received while ineligible. This section does not affect a person's criminal liability under any relevant statute.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.
Vernon's Ann.Civ.St. art. 4438f, § 2.06.

§ 61.028. Mandatory Health Care Services

(a) A county shall, in accordance with department rules adopted under Section 61.006, provide:

- (1) inpatient and outpatient hospital services;
- (2) rural health clinics;
- (3) laboratory and X-ray services;
- (4) family planning services;
- (5) physician services;
- (6) payment for not more than three prescription drugs a month; and
- (7) skilled nursing facility services, regardless of the patient's age.

(b) The county may provide additional health care services, but may not credit the assistance toward eligibility for state assistance.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.
Vernon's Ann.Civ.St. art. 4438f, § 3.01.

Cross References

Podiatrists, payment for services rendered under this section, see § 61.006.

§ 61.053

HEALTH AND SAFETY CODE
Title 2

(j) The public hospital or hospital district shall maintain the records relating to an application for at least three years after the date on which the application is submitted.

(k) If an applicant is denied assistance, the applicant may resubmit an application at any time circumstances justify a redetermination of eligibility.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.
Vernon's Ann.Civ.St. art. 4438f, § 10.03.

Cross References

Indigent care by hospital districts, see § 286.082.

§ 61.054. Mandatory Health Care Services Provided by a Public Hospital

(a) A public hospital shall provide the inpatient and outpatient hospital services a county is required to provide under Section 61.028(a)(1).

(b) If a public hospital provided additional health care services to eligible residents during the operating year that ended before January 1, 1985, the hospital shall continue to provide those services.

(c) A public hospital may provide additional health care services.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.

Vernon's Ann.Civ.St. art. 4438f, § 11.01(a) to (c).

§ 61.055. Services Provided by Hospital Districts

A hospital district shall provide the health care services required under the Texas Constitution and the statute creating the district.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.
Vernon's Ann.Civ.St. art. 4438f, § 11.02.

§ 61.056. Provision of Health Care Services

(a) A public hospital or hospital district may arrange to provide health care services through a local health department, a publicly owned facility, or a contract with a private provider regardless of the provider's location, or through the purchase of insurance for eligible residents.

§ 61.010

HEALTH AND SAFETY CODE
Title 2

§ 61.010. Dedicated Tax Revenues

If the governing body of a governmental entity adopts a property tax rate that exceeds the rate calculated under Section 26.04, Tax Code, by more than eight percent, and if a portion of the tax rate was designated to provide revenue for indigent health care services required by this chapter, the revenue produced by the portion of the tax rate designated for that purpose may be spent only to provide indigent health care services.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.
Acts 1987, 70th Leg., ch. 457, §§ 7, 11.

Vernon's Ann.Civ.St. art. 4438f, §§ 4.04;
12.04.

[Sections 61.011 to 61.020 reserved for expansion]

SUBCHAPTER B. COUNTY RESPONSIBILITY FOR PERSONS NOT
RESIDING IN AN AREA SERVED BY A PUBLIC HOSPITAL OR
HOSPITAL DISTRICT

Cross References

Sale of hospital, county responsibility for services, see § 61.065.

§ 61.021. Application of Subchapter

This subchapter applies to health care services and assistance provided to a person who does not reside in the service area of a public hospital or hospital district.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.
Vernon's Ann.Civ.St. art. 4438f, § 2.01.

§ 61.022. County Obligation

(a) A county shall provide health care assistance as prescribed by this subchapter to each of its eligible county residents.

(b) The county is the payor of last resort and shall provide assistance only if other adequate public or private sources of payment are not available.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

OF CRIMINAL PROCEDURE

CODE OF CRIMINAL PROCEDURE

Art. 104.002

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BY STATE OR COUNTY

V Electronic Research

TLAW Electronic Research Guide fol-
Preface.

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chapter.

Historical and Statutory Notes

Prior Law:

Vernon's Ann.C.C.P.1925, arts. 1038, 1039,
1050, 1051, 1059, 1060.

Acts 1953, 53rd Leg., p. 918, ch. 380, § 1.

Art. 104.002. [1037, 1048, 1049] [1139, 1150, 1151] [1094, 1105, 1106] Expenses for
Prisoners

(a) Except as otherwise provided by this article, a county is liable for all expenses
incurred in the safekeeping of prisoners confined in the county jail or kept under guard
by the county. If a prisoner is transferred to a county from another county on a change
of venue, for safekeeping, or for a habeas corpus hearing, the county transferring the
prisoner is liable for the expenses described by this article.

(b) If a county incurs expenses for the safekeeping of a prisoner from another county,
the sheriff shall submit to the county judge an account of expenses incurred by the
county for the prisoner. The county judge shall approve the amount he determines is a
correct statement of the expenses and sign and date the account.

(c) The county judge shall submit to the commissioners court of the county for which
the prisoner was kept, at a regular term of the court, his signed statement of the account
described by Subsection (b). If the commissioners court determines that the account is in
accordance with the law, it shall order the county treasurer to issue to the sheriff of the
county submitting the statement a draft in an amount approved by the court.

*Text of subd. (d) as amended by Acts 1991, 72nd Leg., ch. 14, §
284(19), eff. Sept. 1, 1991*

(d) A person who is or was a prisoner in a county jail and received medical, dental, or
health related services shall be required to pay for such services when they are rendered.
If such prisoner cannot pay for such services because of indigence, as defined in Chapter
61, Health and Safety Code, said county shall assist the prisoner in applying for
reimbursement through that chapter or the hospital district of which he is a resident. A
prisoner who does not meet the eligibility for assistance payments shall remain obligated
to reimburse the county for any medical, dental, or health services provided and that
county shall have authority to recover the amount expended in a civil action.

*Text of subd. (d) as amended by Acts 1991, 72nd Leg., ch. 434, §
1, eff. August 26, 1991*

(d) A person who is or was a prisoner in a county jail and received medical, dental, or
health related services from a county or a hospital district shall be required to pay for
such services when they are rendered. If such prisoner is an eligible county resident as
defined in Section 61.002, Health and Safety Code, the county or hospital district
providing the services has a right of subrogation to the prisoner's right of recovery from
any source, limited to the cost of services provided. A prisoner, unless the prisoner fully
pays for the cost of services received, shall remain obligated to reimburse the county or
hospital district for any medical, dental, or health services provided, and the county or
hospital district may apply for reimbursement in the manner provided by Chapter 61,
Health and Safety Code. A county or hospital district shall have authority to recover the
amount expended in a civil action.

Added by Acts 1985, 69th Leg., ch. 269, § 1, eff. Sept. 1, 1985. Subsec. (d) amended by Acts 1987,
70th Leg., ch. 1010, § 1, eff. June 19, 1987; Acts 1991, 72nd Leg., ch. 14, § 284(19), eff. Sept. 1, 1991;
Acts 1991, 72nd Leg., ch. 434, § 1, eff. Aug. 26, 1991.

Historical and Statutory Notes

Section 2 of Acts 1991, 72nd Leg., ch. 434,
provides:

"The change in law made by this Act does not
impose a duty on the institutional division of the
Texas Department of Criminal Justice in regards

Vernon's Ann.C.C.P.1911, arts. 1140, 1141,
1152, 1153, 1162, 1163.

C.C.P.1895, arts. 1095, 1096, 1107, 1108, 1117,
1118.

Acts 1881, p. 52.

O.C. 968.

O.C. 958.

to the provision of health care to inmates confined
in county jails or to payment of costs for
the provision of that care."

Prior Law:

Vernon's Ann.C.C.P.1925, arts. 1037, 1048,
1049.



County of Karnes

JOHN W. BERRY

COUNTY ATTORNEY

KARNES CITY, TEXAS 78118

512-780-3736

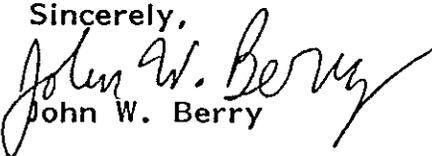
June 1, 1992

Mr. Clem Cannon
County Auditor
Karnes County Courthouse
Karnes City, Texas 78118

Dear Mr. Cannon:

Please refer to my letter of May 14, 1992, regarding Indigent Health Care. For the same reasons stated in that letter the following bill for inmates of the County Jail should be paid.

Sincerely,


John W. Berry

§ 61.026

HEALTH AND SAFETY CODE
Title 2

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.
Vernon's Ann.Civ.St. art. 4438f, § 2.05.

§ 61.027. Change in Eligibility Status

(a) An eligible resident must report any change in income or resources that might affect the resident's eligibility. The report must be made not later than the 14th day after the date on which the change occurs.

(b) If an eligible resident fails to report a change in income or resources as prescribed by this section and the change has made the resident ineligible for assistance under the standards adopted by the county, the resident is liable for any benefits received while ineligible. This section does not affect a person's criminal liability under any relevant statute.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.
Vernon's Ann.Civ.St. art. 4438f, § 2.06.

§ 61.028. Mandatory Health Care Services

(a) A county shall, in accordance with department rules adopted under Section 61.006, provide:

- (1) inpatient and outpatient hospital services;
- (2) rural health clinics;
- (3) laboratory and X-ray services;
- (4) family planning services;
- (5) physician services;
- (6) payment for not more than three prescription drugs a month; and
- (7) skilled nursing facility services, regardless of the patient's age.

(b) The county may provide additional health care services, but may not credit the assistance toward eligibility for state assistance.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.
Vernon's Ann.Civ.St. art. 4438f, § 3.01.

Cross References

Podiatrists, payment for services rendered under this section, see § 61.006.

§ 61.053

HEALTH AND SAFETY CODE
Title 2

(j) The public hospital or hospital district shall maintain the records relating to an application for at least three years after the date on which the application is submitted.

(k) If an applicant is denied assistance, the applicant may resubmit an application at any time circumstances justify a redetermination of eligibility.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.
Vernon's Ann.Civ.St. art. 4438f, § 10.03.

Cross References

Indigent care by hospital districts, see § 286.082.

§ 61.054. Mandatory Health Care Services Provided by a Public Hospital

(a) A public hospital shall provide the inpatient and outpatient hospital services a county is required to provide under Section 61.028(a)(1).

(b) If a public hospital provided additional health care services to eligible residents during the operating year that ended before January 1, 1985, the hospital shall continue to provide those services.

(c) A public hospital may provide additional health care services.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.

Vernon's Ann.Civ.St. art. 4438f, § 11.01(a) to (c).

§ 61.055. Services Provided by Hospital Districts

A hospital district shall provide the health care services required under the Texas Constitution and the statute creating the district.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1985, 69th Leg., 1st C.S., ch. 1, § 1.
Vernon's Ann.Civ.St. art. 4438f, § 11.02.

§ 61.056. Provision of Health Care Services

(a) A public hospital or hospital district may arrange to provide health care services through a local health department, a publicly owned facility, or a contract with a private provider regardless of the provider's location, or through the purchase of insurance for eligible residents.



Bob Bullock
Lieutenant Governor of Texas

The Capitol
Austin, Texas 78711-2068
(512) 463-0001

June 11, 1992

The Honorable Clem Cannon
County Auditor
Karnes County Courthouse
Karnes City, Texas 78118

Dear Clem:

Senator Ken Armbrister and Camille Miller, of my staff, told me of the problem you were having getting a definitive answer in writing regarding an indigent care issue in your county. I will never understand why agencies with the responsibility are reluctant to execute their responsibilities in a timely manner.

Attached you will find a document containing legal research on the issue as Camille understood it. If you have any further questions, please call Camille at 512/463-0025.

Good luck to you all.

Sincerely,


BOB BULLOCK
Lieutenant Governor

BB:cmm

Enclosures

cc: The Honorable Ken Armbrister
Business/District and Capitol Offices



BOB BULLOCK
Lieutenant Governor
Chairman

TEXAS LEGISLATIVE COUNCIL

P.O. Box 12128, Capitol Station
Austin, Texas 78711-2128
Telephone: 512/463-1151

ROBERT I. KELLY
Executive Director



GIBSON D. "GIB" LEWIS
Speaker of the House
Vice-Chairman

June 8, 1992

M E M O R A N D U M

TO: The Honorable Bob Bullock
Lieutenant Governor

FROM: Carolyn Hall
Legislative Counsel

SUBJECT: Responsibility for Health Care Provided to Indigent
Inmates of the Karnes County Jail

INTRODUCTION

Camille Miller of your staff has requested information relating to the liability for providing health care to an indigent person incarcerated in the Karnes County jail. Ms. Miller has advised us that Karnes County and the Karnes County Hospital District are unsure which entity is liable for providing the medical care.

SUMMARY

The Karnes County Hospital District is liable for health care provided to an indigent person incarcerated in the county jail if the person is a resident of the hospital district. Liability for health care provided to a nonresident indigent prisoner is determined by the prisoner's county of residence. The Indigent Health Care and Treatment Act (Chapter 61, Health and Safety Code) applies to the provision of health care to an indigent prisoner who is not a resident of the Karnes County Hospital District or another hospital district.

DISCUSSION

Article 104.002(a), Code of Criminal Procedure, states that a county is liable for all expenses incurred in the safekeeping of

The Honorable Bob Bullock
June 8, 1992
Page 2

prisoners confined in the county jail, which includes expenses related to the provision of medical care. The attorney general has stated in several opinions that this general provision controls unless the prisoner is indigent and is a resident of a hospital district, in which case the hospital district is liable for the health care expenses. See Op. Tex. Att'y Gen. Nos. JM-643 (1987); JM-487 (1986); and H-703 (1975).

Article IX, Sections 4 and 9, of the Texas Constitution state that a hospital district, on creation, assumes full responsibility for providing medical and hospital care for its needy inhabitants. The attorney general has consistently held that these constitutional requirements apply to the provision of medical care to an indigent district resident who is incarcerated in a county jail, regardless of the location of the jail. In reaching this decision, the attorney general has stated that the general provisions of Article 104.002, Code of Criminal Procedure, must yield to the express language of the constitution. Therefore, if an indigent prisoner incarcerated in the Karnes County jail is a resident of a hospital district such as the Karnes County Hospital District or another district created under Article IX, Section 4 or 9, of the Texas Constitution, the hospital district of residence is liable for the provision of medical care.

If an indigent person incarcerated in the Karnes County jail is not a resident of the Karnes County Hospital District or of another hospital district created under Article IX, Section 4 or 9, of the Texas Constitution, it appears that the Indigent Health Care and Treatment Act (Chapter 61, Health and Safety Code) applies to the provision of health care even though Op. Tex. Att'y Gen. No. JM-643 (1987) states that the Indigent Health Care and Treatment Act does not apply. Op. Tex. Att'y Gen. No. JM-643 (1987) was issued on March 12, 1987. On March 13, 1987, Representative Mark Stiles introduced H.B. 2308, which amended Article 104.002 by adding a new Subsection (d). The new Subsection (d) required a prisoner in a county jail to reimburse the county for medical, dental, and other health services. The bill, which was enacted by the 70th Legislature, Regular Session, 1987, without substantive change, also stated that if the prisoner could not pay because of "indigence, as defined in . . . [the] (Indigent Health Care and Treatment Act)," the county of incarceration was required to assist a prisoner in applying for reimbursement under that Act. The bill

The Honorable Bob Bullock
June 8, 1992
Page 3

analysis for the committee report for H.B. 2308 states that the bill "allows payment through the Indigent Health Care Treatment Act (sic)". Although the attorney general has not addressed the change in law that has occurred since the issuance of Op. Tex. Att'y Gen. No. JM-643 (1987), it appears that H.B. 2308 invalidated that opinion's holding relating to the application of Chapter 61, Health and Safety Code.

If there were any doubt relating to the application of Chapter 61, Health and Safety Code, to the provision of health care to indigent county prisoners, the 72nd Legislature probably settled the question when it amended Section 104.002, Code of Criminal Procedure, in 1991. House Bill 1652, authored by Representative Hernandez and sponsored by Senator Krier, rewrote Subsection (d) to state that if a prisoner receives health care from the county or a hospital district and is "an eligible county resident as defined in Section 61.002, Health and Safety Code," the county or hospital district has a right of subrogation to the prisoner's right of recovery from any source. The amendment also states that "the county or hospital district may apply for reimbursement in the manner provided by Chapter 61, Health and Safety Code."

J M V
FEB. DRUGS

KARNES COUNTY HOSPITAL DISTRICT
INDIGENT HEALTH CARE POLICY

1. Only certified Karnes County residents are eligible to apply for indigent health care.
2. Only medical services provided at Otto Kaiser Memorial Hospital under the direction of active medical staff are eligible for assistance.
 - (A) Necessary inpatient transfers or referrals to specialty physicians must be under a non-funded financial arrangement.
 - (B) Only unusual circumstances with Administrator's approval can be considered for funding and will be limited to customary charges or Medicaid rates, whichever is lesser, with a \$5,000 maximum for inpatients & limited to Medicaid rates for specialty physician fees.
(Excluding: Dentists; Psychiatrists; Optometrists; & Ophthalmologists)
3. Up to (3) generic drug prescriptions per month through local pharmacies at cost reimbursement, are eligible for assistance.
4. Limit per individual is \$15,000 per program year. Included in this figure is a limit of \$5,000 for outpatient services. Of the \$5,000 total, \$2,000 can be used for specialty physician fees qualified in Paragraph 2B.
5. Aggregate cash disbursement per program year shall not exceed \$30,000.
6. All individuals claiming medical indigency must make application for assistance.
7. Each individual must have been denied for all other assistance programs & must show written proof of denial.
8. Each applicant must be approved based on:
 - (A) Hill-Burton Guideline Eligibility Standards for all services provided at Otto Kaiser Memorial Hospital.
 - (B) County indigent health care program eligibility standards for specialty physician fees and drug prescriptions.
9. Medical Program - Effective January 1, 1992.
Drug Program - Effective February 1, 1992.


Larry Hedtke, Board President


Harold L. Boening, Administrator

OTTO KAISER MEMORIAL HOSPITAL

ROUTE 1, BOX 450
KENEDY, TEXAS 78119

HAROLD L. BOENING, ADMINISTRATOR

TELEPHONE: (512) 583-3401

February 25, 1992

Warner Dental Clinic
411 N. Highway 123
Karnes City, TX. 78118

ATTN: DR. TOM WARNER

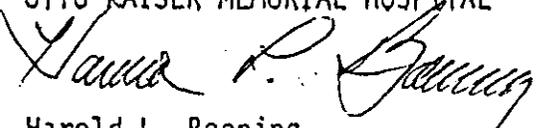
The hospital is reimbursing you for the enclosed bills previously tendered to the county. The Hospital Board is of the opinion that the hospital is not obligated for these charges.

The charge was incurred without the hospital's prior approval as required by the hospital's policy and procedures concerning indigent health care.

In the future, no charges for services rendered will be paid unless previously approved by the hospital and specifically arranged for by the hospital, by voucher or otherwise.

Sincerely,

OTTO KAISER MEMORIAL HOSPITAL


Harold L. Boening
Administrator