

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 06-084

Payment of Medical Expenses of Jail Prisoners on Medical Furlough or Bond

QUESTIONS

1. Is the county responsible for the medical expenses incurred by jail prisoners released on medical furlough either pretrial or after conviction?
2. Is the county responsible for the medical expenses incurred by jail prisoners released on bond either pretrial or on appeal?

OPINIONS

1. In the absence of a waiver, the State is liable for expenses incurred from emergency hospitalization and medical treatment provided to any felon imprisoned in the county jail if the felon is admitted to the hospital while on furlough. In the absence of a waiver, the county is liable for all other medical expenses of county jail prisoners released on furlough either pretrial or after conviction.
2. The county is not liable for payment of the medical expenses of jail prisoners on bond either pretrial or after conviction.

ANALYSIS

In order to answer the questions posed, it is necessary to determine which statute, Tenn. Code Ann. §41-4-115 or §9-8-307(a)(2)(D), governs payment of medical care of county jail prisoners. It is the opinion of this Office that Tenn. Code Ann. §41-4-115 governs.

Tenn. Code Ann. §41-4-115 provides in pertinent part:

- (a) The county legislative bodies alone have the power, and it is their duty, to provide medical attendance upon all prisoners confined in the jail in their respective counties

(b) The state shall be liable for expenses incurred from emergency hospitalization and medical treatment rendered to any state prisoner incarcerated in a county jail or workhouse, provided such prisoner is admitted to the hospital. . . .

Tenn. Code Ann. §9-8-307(a)(2)(D) provides that no claim can be filed against the State arising out of or resulting from

[a]cts of a defendant serving a sentence under probation coupled with periodic confinement pursuant to §40-35-307; work release pursuant to §40-35-315; on furlough pursuant to §40-35-316; a community based alternative to confinement pursuant to title 40, chapter 36; or parole pursuant to §40-35-504, unless the defendant is in the custody of or under the control or supervision of a jailer, corrections officer, law enforcement officer, or other agent of the state or unless the state was negligent in its release of the defendant; *provided, that the state is liable for reasonable medical care for inmates under work release, furlough, or community based-alternatives to confinement, although the inmates are not physically in the custody and control of and under the direct personal control of a jailer, corrections officer or other law enforcement officer.* The state, county, municipality or political subdivision which may employ the inmate but does not have direct supervision and control of the inmate's work release, confinement or community-based alternative to confinement is not liable for the inmate's reasonable medical treatment for injuries incurred while on such work release, community-based alternative, or other work detail. . . .

(Italics added). The italicized portion read alone suggests that, contrary to the provisions of Tenn. Code Ann. §41-4-115, the State is liable for all medical expenses of all prisoners in county jails incurred while they are on furlough. It is the opinion of this Office, however, that §9-8-307(a)(2)(D) does not set the standard for payment of medical expenses; rather, §41-4-115 does.

“The cardinal rule of statutory construction is to effectuate legislative intent, with all rules of construction being aides to that end.” *Browder v. Morris*, 975 S.W.2d 308, 311 (Tenn. 1998). Tenn. Code Ann. §41-4-115(b) was adopted in 1978. Chap. 901 of the Public Acts of 1978. Tenn. Code Ann. §9-8-307(a)(2)(D) was adopted in 1996. Chap. 1036 of the Public Act of 1996. Normally the provisions of the subsequent act would control. However, §9-8-307(a)(2)(D) read as a whole plus a review of the legislative history makes it clear that the General Assembly did not intend to broaden the State's liability for medical expenses incurred for injuries to prisoners via the 1996 act. The focus of §9-8-307(a)(2)(D) is to define the State's liability in tort for the acts of certain prisoners. Consequently, it is codified in that portion of the Code creating the Tennessee Claims Commission and defining its jurisdiction. The second sentence of §9-8-307(a)(2)(D) in contrast to the wording italicized above demonstrates that it was not the intent of the legislature to require the State to assume the cost of medical care for all county prisoners on a release program. The relevant state agency continues to pay medical expenses for county jail prisoners in non-contract jails in accordance with §41-4-115 as it did before the adoption of the 1996 act. The interpretation of a

statute by those charged with its administration is entitled to substantial deference. *Consumer Adv. Div. v. Greer*, 967 S.W.2d 759, 763 (Tenn. 1998); *Riggs v. Burson*, 941 S.W.2d 44, 51 (Tenn. 1997). All of these factors combine to reflect that §9-8-307(a)(2)(D) is not intended to modify the provisions of §41-4-115.

Pursuant to §41-4-115 in the absence of a waiver by the prisoner, the county is liable for payment of the medical expenses of jail prisoners on medical furlough both pretrial and after conviction with the exception noted in the next paragraph. In an analogous situation our Supreme Court held that the State was liable for medical expenses incurred as a result of an automobile accident suffered while a state prisoner was on three-day furlough from a state institution. *Bryson v. State*, 793 S.W.2d 252 (Tenn. 1990). The Court in *Bryson* held that a prisoner on a short furlough was an “inmate” for the purpose of Tenn. Code Ann. §41-21-204(b) which imposes a duty on the Department of Correction to provide proper medical treatment to “any inmate who is ill.” According to the opinion, the state could limit its obligation to provide medical care to its furloughed prisoners by requiring a waiver as a condition of the furlough. Based on the reasoning in *Bryson*, prisoners both pretrial and after conviction are “confined in the jail” while on medical furlough and the county is liable for the payment of their medical expenses absent a waiver. If the sentencing court grants the furlough pursuant to Tenn. Code Ann. §40-35-316, the sentencing court can require the waiver as a condition for furlough.

Subsection (b) of Tenn. Code Ann. §41-4-115 provides that the State is liable for expenses incurred from emergency hospitalization and medical treatment rendered to any person convicted of a felony and imprisoned in the county jail if the prisoner is admitted to the hospital. *State v. Cox*, 8 S.W.3d 268 (Tenn. Ct. App. 1999). Pursuant to *Bryson*, in the absence of a waiver the State’s liability would extend to expenses incurred from emergency hospitalization and medical treatment provided to any felon imprisoned in the county jail if the felon is admitted to the hospital while on furlough.

Our state courts have held that prisoners have the statutory right to receive medical treatment at government expense. *Bryson*, 793 S.W.2d 252; *Chattanooga-Hamilton County Hospital Authority v. Bradley County*, 66 S.W.3d 888 (Tenn. Ct. App. 2002). In *Bryson*, the Court ordered the prisoner injured on furlough compensated for his outstanding medical expenses not covered by the person responsible for the prisoner’s injuries. The Court held: “As an inmate in a state correctional institution, Mr. Bryson had the statutory right to receive medical treatment at the State’s expense.” 793 S.W.2d at 255. In *Chattanooga-Hamilton County Hospital* the Court ordered the county to pay the medical provider the total amount of the cost of the medical services provided to the county prisoner. 66 S.W.3d at 891-892. *But see* Tenn. Code Ann. §41-4-115(d) & (f) which provide for a prisoner co-pay plan and reimbursement from insurance companies, health care corporations, etc.

The county is not liable for payment of the medical expenses of jail prisoners on bond either pretrial or after conviction. Persons on bond are not “confined in the jail” for the purposes of Tenn. Code Ann. §41-4-115. As the concurrence noted in *Bryson*, persons on furlough are still prisoners and still in custody even though given the privilege of being temporarily outside of the institution.

793 S.W.2d at 254-56. A furlough is not a discharge from custody but is intended merely to extend the limits of confinement. *Id.* The Court noted particularly that prisoners on furlough are “in custody” for purposes of the escape statutes. *Id.* at 254-56. Although prisoners on bond are “in custody” for the purposes of the offense of “failure to appear,” they do not “escape from a penal institution” for the purposes of the offense of “escape.” *See* Tenn. Code Ann. §39-16-605 & 609; *Bentley v. State*, 938 S.W.2d 706 (Tenn. Crim. App. 1996), *overruled on other grds.*, *State v. West*, 19 S.W.3d 753 (Tenn. 2000)(community corrections office does not qualify as a penal institution for purposes of Tenn. Code Ann. §39-16-605). In addition, persons on bond do not receive credit on their sentence for time spent on bond. Tenn. Code Ann. §40-23-101.

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