

Opinion No. 46-4920

July 3, 1946

BY: C. C. McCULLOH, Attorney General

TO: R. F. Apodaca Superintendent of Insurance State Corporation Commission Santa Fe, New Mexico

{*245} We are in receipt of your letter of June 29, 1946, and the enclosed agreement between the New Mexico Physicians Service and the Hospital Service Inc., together with the literature and certificates proposed to be used. You ask us whether it is permissible for the Hospital Service, Inc. to operate cooperatively with the New Mexico Physicians Service.

This office has previously held that the New Mexico Physicians Service is not insurance and so is not subject to your supervision. The Hospital Service, Inc. is incorporated under Section 60-1001, etc. of the 1941 Compilation. This section provides in part that any hospital service plan "shall be governed by this article and shall be exempt from all other provisions of the insurance law of this state unless specifically designated herein, not only in governmental relations with the state, but for every other purpose, and no additions hereto hereinafter enacted shall apply to them unless they be expressly designated therein."

This law, then, vests authority in you to do three things: (1) designate hospitals in addition to those specifically authorized to contract with the Hospital Service Corporation; (2) regulate rates charged by hospital service corporations to the subscribers; and (3) rates of payment to hospitals made by hospital service corporations.

In view of the foregoing, it is my opinion that you are not given the right or duty to regulate any of the activities of the Hospital Service, Inc. unless such activity affects the rates paid by the subscribers or paid to the hospital.

In examining the instruments enclosed, I do not find that the agreement would in any way affect the rates, as it appears that the New Mexico Physicians Service agrees to carry its full share of the expenses involved in joint activities. If, however, it should appear to you that in operating under the agreement, the Hospital Service, Inc. is bearing a portion of the expenses of operating the New Mexico Physicians Service, this would affect the rates of the latter so that you could step in and regulate it.

In addition, I note on the proposed pamphlet that the cost of the combined services is set out without a breakdown. As this is a matter relating to rates, you can in your discretion {*246} require separate listing of the rates if you consider it proper.

By ROBERT W. WARD,

Asst. Atty. General