

Opinion No. 57-280

October 29, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

TO: H. Bashein, M. D., Superintendent, Los Lunas Hospital & Training School, Los
Lunas, New Mexico

QUESTION

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1. May the Los Lunas Hospital & Training School exact payment from the Department of Public Welfare for maintenance of patients therein when such patients were welfare cases at the time of admission?
2. If in the affirmative, how far, retroactively, may the institution pursue its request for reimbursement?

CONCLUSIONS

1. No.
2. Not necessary to answer.

OPINION

ANALYSIS

The above questions arise under Section 13-1-28.2, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement, which reads:

"The department of public welfare of the state of New Mexico is hereby authorized to contract with any institution, public or private, for the hospitalization, treatment and care of any recipient of public assistance suffering from any ailment or disease. Payment for such hospitalization, treatment and care shall be made at a rate determined by the state board of public welfare, based upon the average all-inclusive per deim cost for all patients in that hospital during the latest year for which complete cost data is available."

The basic question would seem to be whether this section requires the Department of Public Welfare of New Mexico to pay per capita costs for welfare clients admitted to the Los Lunas Hospital & Training School. Statutory examination discloses (Article III, Section 34) that within stated limitations the Los Lunas Hospital & Training School is required to attend the needs of certain persons needing the supervision of the institution

-- that provision is made for payment for such supervision when the patient or his parents, guardians or custodian, under certain standards, are able to pay. Further, on occasion, the county shall pay costs, expenses and maintenance.

The Los Lunas Hospital & Training School is required to accept medically certified patients from other New Mexico institutions and the reverse is equally true.

In light of the foregoing, this office questions whether it was the intent of the Legislature to have a burden imposed on the budget of one state department or agency to pay a charge made by another budgeted state department or agency for the performance of a duty conferred. Further, it seems definitely forbidden to make a patient being cared for by a state institution a welfare recipient. In fact under the terms of the Federal Social Security Act and, more specifically, Section 13-1-15, N.M.S.A., 1953 Compilation, the Welfare Department is expressly prohibited from making an individual eligible for assistance "if he is a patient in a public or private . . . mental institution. . . ." Hence, this office is of the opinion that the Los Lunas Hospital & Training School may not demand payment from the Department of Public Welfare.

The second inquiry thereupon becomes unnecessary to answer.