

Opinion No. 60-200

October 18, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Honorable Murray A. Hintz, Director Department of Public Welfare P. O. Box 1391
Santa Fe, New Mexico

QUESTION

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1. Will the eligible individuals under the new program of medical assistance for the aged be considered as recipients of public assistance and thereby fall within the provisions of the restriction on the expenditures of state monies for hospitalization of these individuals?

In the event your answer to the first question is that we cannot exceed \$ 18.50 a day under the medical assistance program, will you rule on the second question?

2. Can a hospital which has been paid a total of \$ 18.50 per day by this department collect additional monies from our clients if the all inclusive per diem cost of that hospital exceeds \$ 18.50 per day?

CONCLUSIONS

1. Yes.

2. Yes.

OPINION

{*608} ANALYSIS

The pertinent portion of Sec. 11-4-4 (P.S.) N.M.S.A., 1953 Comp., being the general appropriation act for the 1959-61 biennium, reads as follows:

"Restriction on expenditure, -- no part of the appropriation {*609} hereby made to the department of public welfare shall be used to pay or process the payment of any hospital care of recipients of public assistance at a rate higher than eighteen dollars and fifty cents (\$ 18.50) per day."

The phrase "recipients of public assistance" embraced in 14-4-14 (P.S.) supra, is of course the crux of the problem as posed in both your questions numbers 1 and 2.

The pertinent paragraphs of Sec. 13-1-1, N.M.S.A., 1953 Comp., provide:

e) "Recipient" means a person who has received assistance under the terms of this act.

(f) "Old age assistance" means money payments to aged persons in need.

(l) "Public Welfare" means and includes all forms of public assistance and specific services provided for in this act.

(m) "Public Assistance" means **any** service, aid, assistance, or relief, whether monetary or otherwise, granted to a needy individual by the state department of public welfare.

The pertinent paragraphs of 13-1-4, N.M.S.A., 1953 Comp., provide:

(a) Administer old age assistance -- and general relief.

(e) Cooperate with the federal government, in matters of mutual concern, pertaining to public welfare and public assistance.

(g) Act as the agent of the federal government in welfare matters of mutual concern in conformity with the provisions of this act, and in the administration of any federal funds granted to this state, to aid in the furtherance of any such functions of the state government.

(j) Administer such other public welfare functions as may hereafter be assumed by the state. We find no decision of the New Mexico Supreme Court bearing upon the questions involved herein.

This office in its Opinion No. 5631, dated January 9, 1953, held that the state welfare department has authority under existing legislation to adopt rules and regulations providing for "welfare standards" required under new federal legislation. This opinion is in point as regards **new** federal legislation which may be enacted from time to time such as the instant legislation, "Grants to states for Old Age Assistance and Medical Assistance for the aged."

Likewise our Opinion No. 5740 issued December 28, 1951 provides that the state law is sufficiently elastic to permit compliance with changes in the Federal Social Security Act and the State Board of Public Welfare, by adopting a proper regulation, can conform the state law to the federal requirement that, in determining need of the applicants seeking aid to the blind, their first \$ 50.00 of income earned shall be disregarded. This opinion is in point except it covered aid to the blind whereas the instant question is medical aid for the aged. In our Opinion # 57-26, issued February 14, 1957, in unnumbered Par. 2 of page 2, it was stated as regards Art. 8, Sec 14, New Mexico Constitution providing that donations to or in aid of persons are not allowed:

"However, under the proviso, care and maintenance may be provided to "sick and indigent" persons. It is our view that such care and maintenance, may be extended to those who are either sick **or** indigent. It would not seem necessary that a person, in order to secure such assistance, be both sick **and** indigent. Thus, it may be that the state could constitutionally provide assistance to sick persons without reference to financial ability to pay for medical care."

In our Opinion No. 58-135 issued June 23, 1958, in answer to question {*610} 2 of 3 of a series of questions propounded by the State Department of Health, we held in the affirmative in answer to the question "may the Department of Health use its monies to provide drugs to persons who are ill with tuberculosis but not indigent?"

On page two of the last cited opinion, in unnumbered Paras. 1 and 2 we quoted with approval the holding in our Opinion No. 57-26.

While it is our understanding that a very limited number of our sister states have enacted legislation somewhat in line with the new federal legislation covering medical aid to the aged, we deem it unwise and unnecessary to resort to the statutes and decisions of such states inasmuch as our own statutes and the opinions of this office are sufficient.

We therefore answer your question No. 1 in the affirmative.

As to your question No. 2 we find no New Mexico Statutes prohibiting a hospital from collecting or attempting to collect its excess per diem charges over and above that paid by the Department of Welfare. Neither have we found any New Mexico cases involving the proposition. Our search of the encyclopedias has furnished no enlightenment.

Therefore, since we can find no legal prohibition on excluding the right of a hospital to collect the difference between \$ 18.50 per day all-inclusive per diem costs and their actual certified costs for the recipient of Medical Assistance for the aged, our answer is in the affirmative.

By: Carl P. Dunifon

Assistant Attorney General