

Opinion No. 67-41

March 10, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Honorable B. M. Tabet State Representative Legislative-Executive Building Santa Fe, New Mexico

QUESTION

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Does the Public Health Department have the right to inspect the charts of patients in a hospital?

CONCLUSION

Yes.

OPINION

{*53} ANALYSIS

Under Section 12-1-4, N.M.S.A., 1953 Compilation the health department has the duty to regulate the sanitation and conduct of hospitals insofar as it affects health. Under the above authority the health department has issued regulations requiring that certain hospital records be kept. Charts of patients in the hospital are required to include specific information concerning the patient under the rules and regulations of the health department. To insure that adequate patients' records are being kept by hospitals, inspection is necessary and authorized by law. Section 12-1-3, N.M.S.A., 1953 Compilation gives the health department the power to serve as agent for the United States in all matters of health and grants to the health department such power as may be necessary and appropriate for the exercise of this power. {*54} The health department acts as agent for the Department of Health, Education and Welfare in the implementation of the federal medicare program. It must therefore enforce the federal conditions of participation. Chapter XIII of the "Conditions of Participation for Extended Care Facilities" of the United States Department of Health, Education and Welfare provides that clinical records be maintained. Clinical records include such things as medical history of the patient, all medication and treatments, progress notes by the physician describing any significant change in the patients' condition and notes by the nurses on their observations. Thus we see that under both state and federal law the department of public health must inspect patients charts to determine whether or not proper records are being kept.

This opinion in no way limits the Public Records Act of this state. Sections 71-5-1 through 71-5-3, N.M.S.A., 1953 Compilation. That act provides that every citizen of this state has a right to inspect public records **other than** records pertaining to physical and mental examination and medical treatment of persons confined to any institution. The inspections authorized by law may be made only by officials of the health department and may not be viewed by other citizens of this state. The inspections by the health department are not made to determine the physical or mental condition of the patient, but only to determine whether the proper records are being kept.

The Department of Public Health has the duty to inspect hospitals receiving federal aid under the Hospital and Health Facilities Survey and Construction Act of New Mexico, Section 12-5-10, 1953 Compilation. Under this act the information received by the department is confidential. The information cannot be disclosed publicly in such manner as to identify individuals or facilities, except in proceedings involving the question of licensure. We believe the confidentiality of the records of hospitals not covered by the Hospital and Health Facilities Survey and Construction Act of New Mexico is the same as those hospitals that are covered.

By: Gary O'Dowd

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