Opinion No. 51-5429

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BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Alva A. Simpson Director, Department of Public Welfare Santa Fe, New Mexico

{*134} Recently you inquired of this office whether it would be legal in the State of New Mexico for the Department of Public Welfare to establish a medical pool plan for the Department. The purpose of this plan would be to assure adequate medical care for those eligible for public assistance under the program of the Public Welfare Department.

As you outlined the plan, the Department would estimate the amount of money needed for the *{*135}* creation of this pool by arbitrarily allotting a stipulated amount to the pool, estimated upon the average cost per person for such medical treatment for those eligible for assistance. To the aggregate of the fund thus created, the Social Security Administration of the National Government would then contribute matching funds upon the basis established by the Federal Social Security Administration, and as permitted by amendment to the Social Security Act in 1950. The total would then be available to defray the costs of medical care for those eligible for assistance. I am informed that the arbitrary allotment made by the Department of Public Welfare would be diminished or increased, as circumstances and experience indicated the need thereof.

It appears that in order to be eligible for such matching funds, the medical pool plan must be approved as to legality within the State in which it will operate. It appears further that the Federal Social Security Administration cannot participate in the plan if any unused monies in the medical pool plan would be diverted to uses other than providing for medical assistance.

Inasmuch as the Department of Public Welfare obtains money from the State Treasurer by requisition to cover a period of not more than sixty days in advance, there is no possibility that any of the funds in the pool could be diverted to uses other than those for which intended because the Department in establishing and maintaining the pool, would be prohibited from advancing money to the pool in excess of its reasonable needs for the ensuing sixty days, as provided in N.M.S.A., § 73-131.

At no time would it be possible to say that any surplus exists in the pool, from which funds might be diverted to some other use than that of providing medical assistance, for the reason that the demands upon the pool could not be sufficiently accurately known. This is true because the need for medical care for those eligible for assistance, being an unknown factor, would necessitate that all of the funds in the pool be reserved for such medical care.

If the medical pool fund were to increase in size beyond what experience showed was the normal and usual requirement, the Department would be under an obligation to

refrain from adding further to the pool fund beyond what it anticipated as its reasonable requirements for the next sixty days. It would be compelled to utilize what remained in the fund until such time as further additions thereto might be necessary as the fund was depleted by applying it to the purposes for which it was created.

Under the statute the Department of Public Welfare is given broad powers to provide a program of assistance for those eligible for assistance. The medical pool plan affords a means of providing more adequate medical care for those who are in need of it under the Old Age Assistance and other programs maintained by the Department. The new method of procedure would enable the State of New Mexico to obtain greater assistance from the Federal Government in defraying the cost of providing such medical care for those in need of it, under the direction of the Department of Public Welfare.

There is nothing in the statutes of the State of New Mexico which would prohibit the Department from establishing such a medical pool fund in order to cooperate with the Federal Social Security Administration, subject to the limitation contained in § 73-131, N.M.S.A.

Trusting that this fully answers your inquiry, I am