

Opinion No. 53-5631

January 9, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Alva Simpson, Director State Welfare Department P. O. Box 1391 Santa Fe, New Mexico

{*9} Recently you wrote to this office informing us that an amendment to the Social Security Act requires that a state plan for old age assistance, aid to the blind, and aid to totally and permanently disabled, effective July 1, 1953, provides for the establishment or designation of a state authority or authorities which shall be responsible for establishing and maintaining standards for institutions, if the plan includes payments to individuals in private or public institutions.

You enclosed an interpretation of the new federal law, prepared by the Public Assistance Administration of the Federal Security Agency, which will hereafter be referred to as the federal interpretation.

You also enclosed a memorandum from the Regional Attorney of the Bureau of Public Assistance, Federal Security Agency, Dallas, Texas, indicating that he concludes that present New Mexico legislation does not authorize the establishment of the standards required by the new Federal Act with further legislation. You indicated that you are in disagreement with this interpretation and requested an opinion of this office whether our present statutes permit the establishment of such standards without additional legislation.

Your attention is directed to the federal interpretation of the terms "state authority or authorities" and the term "standards", appearing on page 3 of the interpretative bulletin, which reads as follows:

"The reference to 'State authority or authorities' indicates that the responsibility need not be vested in one administrative unit of the State government. Responsibility for establishing and maintaining standards for institutions may be assigned to one or more units of State government. One State agency may be responsible for fire regulations, another for health and another for welfare, etc. Also, one State authority may have all these responsibilities with respect to a specified group of institutions, and another State authority, responsibility for another group of institutions (e.g., medical institutions, domiciliary institutions, etc.). The amendment does not require that the State public assistance agency be the standard-setting authority. When responsibility for establishing and maintaining standards is divided within a State, however, the function of coordination is essential to achieving the over-all objective of this provision.

"Standards' specified in the Federal Act include standards related to health, safety, and humane treatment of individuals in institutions. The form and content of these 'standards' are matters for State decision."

Your attention is further directed to the federal interpretation dealing with the method of maintenance of standards. This appears upon page 16 of the interpretative bulletin and reads as follows:

"1. The State standard-setting authority be endowed with power of enforcement, expressed in {*10} the specific power to issue a license or approval, and also, in the power to withdraw such license or approval, and to close an institution failing to meet requirements or standards when no other action is consonant with the provision of proper care or service.

"2. The license or approval be issued after visitation or inspection, and maintained subject to regular supervisory visits made no less frequently than once annually."

In answering your request this office is making no attempt to define "standards", as that term is used in the new federal legislation. It is sufficient to say that "standards", of necessity, embrace two generic classification, which will be called, for the purpose of this opinion, "health standards" and "welfare standards".

It is my opinion that under present New Mexico laws, the State Department of Public Health possesses the authority to prescribe "health standards" for the public and private institutions mentioned in the new Federal Act.

With respect to hospitals receiving federal aid, the state hospitals' survey and construction act, 71-1201, et seq., N.M.S.A., gives the director of the State Department of Health, with the assistance of the Advisory Hospital Council, the power to establish standards and to enforce them in the manner required in the new legislation. Thus no question whatsoever exists as to such institutions.

(Under Chapter 71, N.M.S.A., the State Department possesses authority to establish rules and regulations and standards for health).

While the act does not provide for licensing of institutions, the department is given ample authority to enforce the act, its rules and regulations. Thus, so far as "health power to enforce these standards required by the new Federal Act.

A somewhat different situation exists with respect to "welfare standards". Chapter 73-101 N.M.S.A., et seq., establishes the State Department of Public Welfare and by that act it is given the power to formulate detailed plans, make such rules and regulations and take such action as is deemed necessary to carry out the provisions of the act.

It is authorized to cooperate with the federal government in matters of concern pertaining to public welfare and public assistance and is specifically authorized to cooperate with the proper departments of the federal government and all other departments of the state and local governments in the enforcement and administration of the Federal Social Security Act and amendments thereto.

While the act does not provide for the licensing of institutions or for any civil or criminal penalties for the violation of any rules or regulations which may be established by the State Department of Public Welfare, it seems to be apparent to make rules and regulations to carry out the spirit of the act. In my opinion this authorizes the department to establish "welfare standards" and it has the power to enforce such standards by refusing to place individuals receiving public aid within institutions not complying with the rules. Thus in effect, it "licenses" such institutions by withdrawing approval of institutions which do not comply with whatever standards it may set.

Statutes dealing with public assistance are to be liberally construed {**11*} to carry out the intent and purpose of the legislation.

It is my opinion, therefore, that the State Department of Public Welfare has authority under present legislation to adopt rules and regulations providing for "welfare standards" required under the new federal legislation.

It would therefore appear that the necessary authority to establish and enforce the standards required by the new federal legislation are presently found in the two New Mexico state agencies above mentioned and apparently all that would be required to satisfy the requirements of the new federal legislation is coordinated action between these departments. This appears to be the requirement of the new federal legislation as interpreted by the federal government.

As described above, while the power apparently exists within the two state agencies to establish and regulate "health" and "welfare" standards, it necessitates additional coordination between the two departments be accomplished, unless they have already coordinated their work in compliance with the federal interpretation. The federal interpretation apparently desires a licensing system. While the New Mexico Department of Public Health and the New Mexico Department of Public Welfare can set the standards and regulate those standards by withholding funds there is absolutely no authority to license as contemplated by said interpretation.

It is the opinion of this office that while there is a strained compliance with the federal interpretation as regards the regulation of the institutions involved, there is no compliance in that these institutions can be licensed by either department. It is our suggestion that the problem be submitted to the Legislature and that legislation be effected which will comply with the federal interpretation to the letter.

We trust that this gives you the information desired.

By: Fred M. Standley

Asst. Attorney General