

**Opinion No. 58-160**

July 30, 1958

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

**TO:** M. W. Hamilton, Attorney, Department of Public Welfare, Santa Fe, New Mexico

**QUESTION**

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May the State Board of Public Welfare pay hospitals for its patients a sum in excess of \$ 18.50 per day, the overage thereof being for blood furnished the patient?

CONCLUSION

No.

**OPINION**

ANALYSIS

The statutory enactments pertinent to the problem hereto would appear to be contained in the Public Welfare Act, Article I, Chapter 13 of the 1957 Supplement to the New Mexico Statutes Annotated.

§ 13-1-28.1 states:

"It is hereby declared to be the policy of the State of New Mexico to provide necessary Hospital care for recipients of public assistance and to pay the public or private hospital for such care at a rate based upon the **all-inclusive** per diem cost of care for all patients in that hospital. (Emphasis ours)

§ 13-1-28.2 states:

". . . Payment for such hospitalization (referring to Welfare patients) treatment and care shall be made at a rate determined by the State Board of Public Welfare based upon the average **all-inclusive** per diem cost for all patients in that hospital during the latest year for which complete cost data is available."

§ 13-1-28.3 states:

"All hospitals shall file annually . . . to enable him to determine the all-inclusive per diem cost for all patients in each hospital . . . for any hospital that has not been in operation

for a full year, and is therefore unable to furnish complete cost data for a year, payment shall be at the average amount paid per patient to all hospitals."

§ 13-1-28.4 states:

"The state board of Public Welfare shall make its determination of the **all-inclusive per diem cost for all patients in each hospital**. . . In determining such per diem cost, **the costs of ancillary services shall be included**; the cost of servicing long term indebtedness shall not be included." (Emphasis ours)

The 1957 Appropriations Bill provides on Page 546 in the 1957 Session Laws that:

"No part of the appropriation 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 foregoing language appears clear and unequivocal unless it can be determined that the supplying of blood by a hospital to a patient is not part of a hospital service. This office can see no alternative to include in this item in the "all-inclusive" per diem cost per patient. This office is of the opinion that the supplying of blood is a hospital function beyond question. Further, the statutory reference to the inclusion of the cost of "ancillary" services serves to further confirm this view. The dictionary definition of "ancillary" includes such words as "auxiliary", "subordinate" and we add that the supplying of blood conforms to such in the over-all picture of hospital services.

The appropriations act provision above quoted limits welfare payments by the maximum figure of eighteen dollars and fifty cents (\$ 18.50) per day for "any hospital care of recipients of public assistance" Hence, this office is of the opinion that the cost of blood cannot be made an addition to the eighteen dollars and fifty cents (\$ 18.50) per diem rate.