

Opinion No. 85-05

October 24, 1985

OPINION OF: Paul Bardacke, Attorney General

BY: Carolyn Wolf, Assistant Attorney General

TO: Juan Vigil Secretary Human Services Department Santa Fe, New Mexico

QUESTIONS

Does the State of New Mexico have authority under State law to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions?

CONCLUSIONS

Yes.

ANALYSIS

In order for the State to be eligible for certain child welfare grants, 45 CFR 1340.15(d)(2)(ii)(C) requires that the State must submit with its grant application a copy of an official numbered opinion of the Attorney General of the State that states that the State has authority under State law "to pursue any legal remedies,... as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions."

OPINION

This opinion is written to comply with that requirement. The New Mexico Children's Code, N.M. Stat. Ann. Sections 31-1-1 et seq. (1978), provides the procedures for the protection of neglected or abused children. In conjunction with the Rules of procedure for Children's Court, the Human Services Department, through the Children's Court may petition a district court to have a child declared neglected and placed in the custody of the Department for appropriate medical care or treatment. See Section 32-1-17; 32-1-18, 32-1-22; 32-1-5; Children's Court Rules 52, 54 and 57. A neglected child, on whose behalf the department is allowed to act, is defined in N.M. Stat. Ann. Section 32-1-3L (1985 Supp.):

L. "neglected child" means a child:

(1) who has been abandoned by his parent, guardian or custodian;

(2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parent, guardian or custodian or the neglect or refusal of the parent, guardian or custodian, when able to do so, to provide them;

(3) whose parent, guardian or custodian is unable to discharge his responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity; or

(4) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, is for that reason alone a neglected child within the meaning of the Children's Code;

Section 32-1-3L(2) supports a petition by the Human Services Department to gain custody of a disabled infant denied medical care by parent, guardian or custodian.

It is therefore the opinion of this office that the Children's Code provides the Human Services Department authority to pursue legal remedies to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

ATTORNEY GENERAL

Paul Bardacke, Attorney General