

DOCUMENT RESUME

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[Involvement of the New Orleans Legal Assistance Corporation in a Lawsuit Related to Medicaid Reimbursements for Abortions]. HRD-77-130; B-156518. August 3, 1977. 2 pp.

Report to Rep. David C. Treen; by Robert F. Keller, Deputy Comptroller General.

Contact: Human Resources Div.

Budget Function: Education, Manpower, and Social Services: Social Services (506).

Organization Concerned: Legal Services Corp.; New Orleans Legal Assistance Corp.

Congressional Relevance: Rep. David C. Treen.

Authority: Legal Services Corporation Act of 1974.

The involvement of a Legal Services Corporation grantee in a lawsuit against the State of Louisiana on behalf of two women seeking Medicaid reimbursement for abortions performed in other than State-licensed hospitals does not violate the prohibitions on abortions in the Legal Services Corporation Act of 1974. Findings/Conclusions: The Louisiana licensure law for physicians states that a license may be refused, suspended, or revocation proceedings instituted for performing a therapeutic abortion outside a State-licensed hospital. Since the policy of Louisiana's Medicaid program to pay for therapeutic abortions only when performed in a licensed hospital is based on the license law, the lawsuit is directed against the law and hence the State. The prohibition contained in the Legal Services Corporation Act of 1974 against the use of funds made available under the Act to provide legal assistance with respect to lawsuits seeking to procure nontherapeutic abortions does not appear to apply in this case, nor does it appear that the prohibition against compelling any individual or institution to perform or assist in an abortion is applicable, since the physicians and clinics are willing to proceed. Attorneys for the State of Louisiana have conceded that the State is required to provide Medicaid payments for therapeutic abortions performed in clinics and has agreed to do so in the future without a court order. (SC)

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-156518

AUG 3 1977

The Honorable David C. Treen
House of Representatives

Dear Mr. Treen:

Pursuant to your request of May 26, 1977, and subsequent agreements with your office, we have considered the New Orleans Legal Assistance Corporation's involvement in a lawsuit against the State of Louisiana on behalf of two women seeking medicaid reimbursement for abortions performed in other-than-State-licensed hospitals. Also listed as plaintiffs in the case are two physicians and two clinics offering facilities and staff for performing abortions.

According to documents filed with the court by the plaintiffs, the Louisiana licensure law for physicians (LSA-R.S. 37:1285(9)) states that a license may be refused, suspended, or revocation proceedings instituted for performing a therapeutic abortion outside a State-licensed hospital. Since the policy of Louisiana's medicaid program to pay for therapeutic abortions only when performed in a licensed hospital is based on the licensure law, the lawsuit is directed against that law and hence the State.

Because attorneys representing the plaintiffs are employed by the New Orleans Legal Assistance Corporation--a Legal Services Corporation grantee--Federal funds have been used in the litigation. However, information we obtained on the lawsuit indicates that a Legal Services Corporation grantee's involvement in this case does not violate the prohibitions on abortions in the Legal Services Corporation Act of 1974.

The Legal Services Corporation Act of 1974 states in part that

" * * * No funds made available by the Corporation under this title, either by grant or contract, may be used * * * to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion

or to compel any individual or institution to perform an abortion; or assist in the performance of an abortion; or provide facilities for the performance of an abortion; contrary to the religious beliefs or moral convictions of such individual or institution * * *."

The prohibition against nontherapeutic abortions does not appear to apply to this case, since a physician-plaintiff in the case stated (in an affidavit) that he had examined both women and that, in his opinion, " * * * they are both eligible for a therapeutic abortion because carrying their pregnancy to term creates a threat to their lives and health." Similarly, it does not appear that the prohibition against compelling an individual or institution to perform or assist in an abortion is applicable to this case since the physician who would perform the abortions, and the clinic in which they would be performed, are willing to proceed.

At a hearing on May 6, 1977, attorneys for the State of Louisiana conceded that the State is required to provide medicaid payments for therapeutic abortions performed in clinics, and has agreed to do so in the future without a court order.

Given the above conditions, a Legal Services Corporation grantee's involvement in this litigation would not violate the prohibitions on abortions in the Legal Services Corporation Act of 1974.

As agreed with your office we are providing a copy of this report to the Legal Services Corporation and to others who may request it.

Sincerely yours,

DEPUTY

R. F. Kelly
Comptroller General
of the United States