

*Thompson*

*File*

June 15, 1956

Honorable Edward J. Patten  
Secretary of State  
State House  
Trenton, New Jersey

Dear Secretary Patten:

Enclosed herewith for filing is the following regulation of the  
Bureau of Assistance of the Division of Welfare of this Department:

Municipal Aid Regulation 2.300A (Special Supplement)

Replaces Special Supplement revised 6/1/53 and Supplemental  
letters dated 5/7/54 and 4/26/55 respectively.

Very truly yours,

DEPARTMENT OF INSTITUTIONS AND AGENCIES

*John W. Tramburg*  
John W. Tramburg,  
Commissioner

JWT:14

CC: Mr. Robert Burkhardt, Executive Secretary ✓  
to the Governor  
Mr. Elmer V. Andrews, Director of Welfare  
Mrs. Elizabeth Feehan, Assistant to the Commissioner

State of New Jersey  
Department of Institutions and Agencies  
Division of Welfare

BUREAU OF ASSISTANCE

Municipal Aid  
REGULATION # 2.300A  
(Special Supplement)

ISSUED: \_\_\_\_\_  
(Date)

REV.: 6/1/53, 6/15/56  
(Date)

Supplement 5/7/54  
" 4/26/54

TITLE: ADMINISTRATION

SUBJECT: General Assistance Allowances  
(Regulations Governing Allowances for Services of Visiting Nurse Association)

STATUTORY REFERENCE: R.S. 44:8-111

This 6/15/56 revision replaces the 6/1/53 issue and cancels Supplemental letters No. 1 and No. 2.

Livingston, Chief  
Bureau of Assistance

Approved:

By: John W. Trumbull



State of New Jersey  
Department of Institutions and Agencies  
Division of Welfare-Bureau of Assistance

Rev. 6/15/56

County Welfare Board Ruling Series No. 28  
Municipal Budget Manual 2.300A,  
(Special Supplement)

REGULATIONS GOVERNING ALLOWANCES FOR SERVICES OF  
VISITING NURSE ASSOCIATIONS

Introductory Statement

These regulations are issued to establish uniform policy under the Old Age and Disability and General Assistance programs in relation to the following question:

Assuming that a given county or municipality makes an appropriation to a Visiting Nurse Association, is the county welfare or municipal welfare department warranted in including specific allowances, to pay for services furnished by such association to assistance clients in that county or municipality, in the assistance payments to such clients?

Attorney-General's Memorandum Opinion 9/29/55

The issues involved in this question were presented to the Office of the Attorney-General for examination and opinion.

The Attorney-General considered specifically

"the legal propriety of a proposed regulation which would forbid payment to a Visiting Nurse Association for services to needy clients if the association is the recipient of public funds"

and concluded finally that

"the proposed regulation would be reasonable, would come within the sphere of the delegated authority and would be related to the attainment of the legislative objectives."

Findings by the Bureau

The New Jersey Constitution (Article VIII, Section III, paragraph 3) provides that "no donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association or corporation whatever."

The Bureau finds that appropriations lawfully made by municipalities and counties to Visiting Nurse Associations are not in contravention of the constitutional prohibition, if they are made pursuant to a contract for specific services to be rendered by the Association, and if such contract is authorized by some enabling provision of the Statutes. Contracts with visiting nurse associations and other similar public health service organizations are authorized in the Revised Statutes 40:13-1 to 4 inclusive. One of the limitations in this statutory authorization is that the contract, if made, "shall be for the benefit of all the inhabitants in the territory covered by the contract."



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Accordingly, the Bureau finds that the Legislature, in R.S. 40:13-1 to 4 inclusive, has provided and established a specific method by which counties and municipalities may provide for and purchase visiting nurse service needed by inhabitants of such county or municipality, including inhabitants who require or may be receiving public assistance for other maintenance requirements.

The Bureau finds that, where the method so authorized is in fact being utilized by the county or municipality, the service must, in contemplation of law, be considered available to recipients of public assistance on at least the same terms as it is available to persons who are not recipients of public assistance.

The Bureau finds that, where the subsidized service is available without cost to any inhabitant of the county or municipality paying the subsidy, it must be considered available without cost to any of such inhabitants who are recipients of public assistance.

The Bureau finds that, where the service (whether or not subsidized by the county or municipality) is not available to any inhabitant of the county or municipality unless a specified minimum fee is paid by or on behalf of the recipient of the service, it must be considered that the service is not available to a recipient of public assistance unless such specified minimum fee is paid by him or on his behalf.

### Regulations

1. A "subsidized Association" means an Association which receives, from a county or municipality, an annual sum of money appropriated by such county or municipality (as distinguished from individual payment of claims for specific services furnished to specific individuals.)

2. Each county welfare board and each municipal welfare department shall determine, with respect to each Visiting Nurse Association which provides service to persons in such county or municipality, and shall maintain a current list of all such Associations with information as to each of such determinations:

a. Whether or not the Association is subsidized by a county or municipal appropriation, or both;

b. If subsidized, whether or not there is a written contract, agreement, etc. between the Association and the county or municipality, specifying the class or classes of service to be provided by the Association, and identifying the class or classes of persons to whom the service is to be furnished;

c. Whether the Association (whether subsidized or not subsidized) provides service to any person without charging a fee to be paid by such person or on his behalf;

d. If a specified minimum fee is charged in all cases, the amount of such minimum fee.

3. In the case of any Association receiving a county or municipal subsidy, no allowance shall be included in assistance grants to clients for services provided by such Association, unless it has been demonstrated, to the satisfaction of the County Welfare Board or Local Assistance Board that

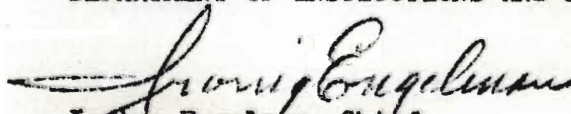
a. The client does not fall within any class for which the Association is under specific contract or agreement to provide service without charge (as referred to in 1.b. above); and



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Municipal Budget Manual 2.300A (Special Supplement)

- b. The Association does in fact charge a minimum fee to be paid by or in behalf of all persons (other than those entitled to service without charge) who receive the same service; and
  - c. The fee being charged to the client is not greater than the minimum fee otherwise charged for the same service to persons who are not recipients of public assistance.
4. In the case of any Association not receiving a county or municipal subsidy, no allowance shall be included in assistance grants to clients for services provided by such Association, unless it has been demonstrated, to the satisfaction of the County Welfare Board or Local Assistance Board that
- a. The Association does in fact charge a minimum fee to be paid by or on behalf of all persons who receive the same service; and
  - b. The fee being charged to the client is not greater than the minimum fee otherwise charged for the same service to persons who are not recipients of public assistance.
5. The allowance for visiting nurse visits shall be at the lowest rate charged by the particular association to any individual or agency purchasing the service, but not to exceed \$3.00 per visit.
6. The effective date of this regulation is July 1, 1956.

DEPARTMENT OF INSTITUTIONS AND AGENCIES

  
Irving Engelman, Chief  
Bureau of Assistance

IE/MCRd

Approved: 6/12/56  
Elmer V. Andrews  
Director of Welfare

County Welfare Boards:

Ruling No. 28

Insert in Handbook under section  
"Rulings and Bulletins"  
Destroy Ruling No. 28, revised 6/1/53,  
Supplement No. 1 issued 5/7/54, and  
Supplement No. 2 issued 4/26/55

Municipal Welfare Departments:

Municipal Budget Manual 2.300A  
(Special Supplement)

Insert in Municipal Budget Manual 2.300A  
Destroy MA 2.300A (Supplement) dated 6/1/53  
and supplemental letters dated 5/7/54 and  
4/26/55



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March 15, 1955

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Honorable Grover Richman  
Attorney General of New Jersey  
State House  
Trenton, New Jersey

Dear Mr. Richman:

The Department requests your counsel and guidance in relation to the issues herein described.

The Department is responsible for the administration, or supervision of the Administration by local units, of the following public assistance programs:

- (1) Old Age and Disability Assistance - R.S. 44:7  
(administered by County Welfare Boards under Departmental supervision through the Bureau of Assistance.)
- (2) Home Life Assistance - R.S. 30:5  
(administered by the State Board of Child Welfare, a Departmental agency, in association with County Welfare Boards.)
- (3) Blind Assistance - R.S. 30:6  
(administered by the Commission for the Blind, a Departmental agency, in association with County Welfare Boards.)
- (4) General Public Assistance - N.J.S.A. 44:8  
(administered by Local [Municipal] Assistance Boards under Departmental supervision through the Bureau of Assistance.)

The allowances payable by the administering units to needy individuals and families who qualify for programs (1) (2) and (3) are mandated, limited, and otherwise governed by Departmental regulations embodied in a Budget Manual; and the allowances payable under program (4) for which "State Aid" is granted are governed by a similar but not identical set of regulations.

Programs (1), (2), and (3) are Federally subsidized under the provisions of Titles I, IV, X and XIV of the Federal Social Security Act, and in that relationship the Department has the responsibility for assuring the Federal agency that the programs are uniformly "in effect throughout the State" and that "If administered by political subdivisions, [are] mandatory upon them."

An operating principle which is both expressed and implied in Departmental regulations is that where a needy client is found to require certain specified health services, the administering agencies are authorized and required to make monetary allowances to the client to enable him to procure such services.

Another operating principle which is both expressed and implied in Departmental regulations is that where a needy client is found to require a specified commodity or service, but such commodity or service is available to and procurable by him without cost to him, no monetary allowance to him for such purposes shall be made.



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Recently attention has become focused on an area involving possible conflict between these two principles with particular reference to services provided to individuals in the community by voluntary non-profit Visiting Nurse Associations. It was discovered that some of such Associations, in various localities throughout the State, are receiving lump-sum appropriations of funds from either the county or municipal governing body, notwithstanding the provision in the New Jersey Constitution (Article VIII, Section III, paragraph 3) that "no donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association or corporation whatever."

Enabling legislation for such lump-sum appropriations appears to exist in R.S. 40:13-1 to 4 inclusive. This legislation authorizes governmental units to enter into contracts for specific services rendered by visiting nurse associations and other similar health service organizations, with a specific limitation, inter alia, that any such contract, if made, "shall be for the benefit of all the inhabitants in the territory served by the contract."

Several of the County Welfare Boards, of their own initiative, considered the question whether assistance clients, residing in a territory served by such a contract, were entitled to receive, in their assistance payments, specific additional monetary allowances to enable such clients to pay for services received from a Visiting Nurse Association so subsidized by the county or municipal governing body. The County Welfare Boards concerned referred this question to their respective counsel for opinion. The opinions rendered were substantially to the effect that such assistance clients were already entitled, as inhabitants of the territory concerned, to such services on a "free" basis; and that the inclusion of additional monetary allowances for such purposes in the assistance grants of the individual clients, would constitute an unnecessary and improper duplication of payment out of public funds.

Acting in reliance on such opinions, the County Welfare Boards concerned have ceased to grant additional specific monetary allowances to the particular clients who receive service from a subsidized association, while continuing to grant such allowances to clients who receive service from an unsubsidized association.

The Bureau of Assistance of this Department has been asked by the County Welfare Boards (including both those which have established policy bases on opinion of Counsel, and those which are uncertain how to be governed) to promulgate official regulations clarifying this issue one way or the other.

At the same time, certain of the subsidized Visiting Nurse Associations which have been directly affected by the issue, have also made representations to us seeking clarification and official resolution of the matter. On behalf of these Associations, special attention has been focused on the following considerations:



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1. The amount of subsidy which the Association receives from the municipal governing body is frequently a relatively small amount, unrelated to the actual cost of providing service. Some of these Associations have pointed out that if they are deprived of the individual payments for each public assistance case, additional to the lump-sum subsidy, they will be financially unable to continue operations.
2. It has been pointed out that in many situations the municipal governing body is making a lump-sum appropriation to the Association, without actually having entered into any express contract. In these situations it has been argued that since no contract exists the provisions of R.S. 40:13-1 to 4 do not apply, and that the payment by the municipality should be regarded merely as a donation or contribution, which does not disable a subsidiary public agency of the same county or municipality from making additional specific payments to or on behalf of specific individuals who receive service.
3. The argument has also been advanced that the provisions of R.S. 40:13-1 to 4 apply to the special situation where there is a joint contract between both a county and one or more municipalities, on the one hand, and a health association on the other; that the limitations of the statute therefore have no applicability to a situation where only one governmental unit is the appropriating body; and that any single governmental unit has inherent power, "in the statutory provisions relating generally to the powers of a municipality", to make a lump sum appropriation to such a voluntary association, with or without a contract, express or implied, and unaffected by any identifiable statutory or constitutional restrictions.

Your careful analysis of these issues, and your appropriate advices in relation thereto, is respectfully requested.

Very truly yours,

DEPARTMENT INSTITUTIONS AND AGENCIES

(signed) F. Lovell Bixby  
F. Lovell Bixby, Ph.D.  
Acting Commissioner

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State of New Jersey  
Department of Law and Public Safety  
State House Annex  
Trenton 7

September 28, 1955

Honorable John W. Tramburg  
Commissioner of Institutions and Agencies  
State Office Building  
Trenton, New Jersey

MEMORANDUM OPINION

Dear Commissioner Tramburg:

A request for advice by Acting Commissioner Dr. F. Lovell Bixby concerning the administration of several assistance programs sets forth the following facts:

Your department pursuant to statutory authority supervises and regulates the administration of the programs of Old Age and Disability Assistance, R.S. 44:7-12, as amended, Home Life Assistance, R.S. 30:5-33, as amended, et seq., Blind Assistance, R.S. 30:6-3, as amended and General Public Assistance, N.J.S.A. 44:9-107, et seq., by various state, county and municipal agencies. In connection with such supervision you have learned that in some instances funds have been expended by paying relief funds to Visiting Nurse Associations for services rendered to needy clients. Some of the Visiting Nurse Associations receive appropriations from county or municipal governments.

The request seeks advice as to the legal propriety of a proposed regulation which would forbid payment to a Visiting Nurse Association for services to needy clients if the association is the recipient of public funds.

At the outset we wish to make it clear that we shall not pass upon the policy question of the wisdom or advisability of such a regulation but shall confine our discussion to the legal issues presented.

An examination of the statutes relating to each of the programs under discussion indicates that the power to make rules and regulations has been provided in each instance.

R.S. 44:7-12, as amended, pertaining to Old Age and Disability Assistance provides, in part, as follows:

"Necessary medical and health services and supplies may be granted in addition thereto in accordance with regulations of the State division. The amount and nature of assistance which any person shall receive, the manner of providing it, and the conditions upon which it is granted, shall be determined by the county welfare board as the bureau of old age assistance with due regard to the conditions existing in each case, in accordance with the rules and regulations of the State division \*\*\*."



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R.S. 30:5-4 provides that "The State Board of Children's Guardians shall be empowered to enact such reasonable rules and regulations as are consistent herewith for the purpose of carrying into effect the meaning of this chapter." Chapter 138, P.L. 1951 purported to repeal this and other sections. However, we held in Formal Opinion (1955) No. 12 that a provision of a statute purporting to repeal another statute need not be given literal effect if the intention of the statute indicated otherwise. More specifically, we held that

"In our opinion, an examination of Chapter 138 of the Laws of 1951 as a whole clearly establishes that the repealing language in section 38 thereof, although absolute in terms, is actually limited in its operation and effect to the repeal of the administrative and financing provisions of Articles I and II as they apply to the maintenance program which had been set up under Article III, which was thereupon repealed and superseded. The repealer does not and was not intended to affect Article I and II in its applicability to the Home Life Assistance program under Article IV."

We, therefore, find that the power to make regulations concerning the Home Life Assistance program still exists.

The power to make rules and regulations as to the Blind Assistance Program is found in R.S. 30:6-3, as amended. It provides that the Commission for the Amelioration of the Blind shall

"\* \* \* supervise the administration by the counties of the relief made available hereunder, and shall establish and enforce such rules and regulations as may appear necessary or desirable to carry out the provisions of the act."

The General Public Assistance Law also delegates power to make rules and regulations. N.J.S.A. 44:8-111 provides that

"The commissioner (Commissioner of Institutions and Agencies, see N.J.S.A. 44:8-108, N.J.S.A. 30:48-4 and N.J.S.A. 30:4B-5) shall:

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(d) Promulgate, alter and amend from time to time such rules, regulations and directory orders as may be necessary for the administration of State aid and for the carrying out of any provisions of law regulating the same and of the provisions of this act, which rules, regulations and orders shall be binding upon the various municipalities;"



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N.J.S.A. 44:8-113 provides

"The commissioner may, as to each municipality in which public assistance is administered by the commissioner under this act,

(a) Prescribe all rules and conditions under which the funds allotted for State aid shall be administered;"

Having seen that the power to promulgate regulations exist as to the programs under discussion, we now consider whether regulations such as those proposed, would be sustained as to subject matter. A rule or regulation which is unreasonable, capricious or arbitrary is void; to be valid a rule must bear a reasonable relation to the objectives of the legislation under which it is adopted. Abelson's, Inc. v. N.J. State Board of Optometrists, 5 N.J. 412 (1950); Labash v. Bd. of Embalmers, etc., State of N.J., 12 N.J. Super. 334 (App. Div. 1951); Sherry v. Schomp, 31 N.J. Super. 267 (App. Div. 1954).

The statutes setting up the programs under discussion have as their purpose the providing of necessary services not otherwise provided. R.S. 44:7-12, as amended, pertaining to Old Age and Disability Assistance, provides that "Necessary medical and health services and supplies may be granted \* \* \*" (emphasis supplied throughout). As to the Home Life Assistance program, there is provision for payment of a "minimum amount of money necessary for the support of the family" R.S. 30:5-35, as amended. Similarly, as to Blind Assistance, R.S. 30:6-3, as amended, defines as a person eligible for relief, one "who by reason of blindness is unable to earn sufficient money to provide for the necessities of life \* \* \*" And the General Public Assistance Law sets forth its policy as follows:

"It is hereby declared to be the public policy of this State that every needy person shall, while in this State, be entitled to receive such public assistance as may be necessary, and that the furnishing of such public assistance is primarily the duty of the municipalities and of civic and charitable organizations but that all needy persons not otherwise provided for under the laws of this State shall hereafter receive public assistance pursuant to law and the provisions of this act."

It would seem in light of the above statutory provisions, that the proposed regulations would be reasonable, would come within the sphere of the delegated authority and would be related to the attainment of the legislative objectives. Your agencies might very well determine that subsidized services available without cost are not necessary within the meaning of the statutes in the sense that since they are available there would be no necessity for the state, counties, or municipalities to provide for them through the medium of the various relief programs.



Hon. John W. Trumburg

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In our opinion, if such findings are made, regulations such as those proposed would be valid and binding upon the various agencies under the supervision of your department.

Very truly yours,

GROVER C. RICHMAN, JR.,  
ATTORNEY GENERAL

By  
(signed) John F. Crane  
John F. Crane  
Deputy Attorney General

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