Subsequently, on April 2, 1968, the Associate Solicitor for Interpretations and Opinions in a memorandum to your Regional Attorney in Dallas concluded after a review of our contracts that "the services are mainly custodial and little in the nature of medical services is envisioned". I cannot agree with the constructions or the categorical classification of the type of care given in our community nursing home program.

The approaches and the conclusions reached seem to have stemmed from examation of only selected language from our contracts in the light of an earlier ruling by the Administrator of June 22, 1966, addressed to the Gillardo Hospital in Puerto Rico. That interpretive decision is to the effect that Federal contracts with hospitals for the care of patients are not within the scope of the Service Contract Act. The ruling reads as follows:

"It is assumed that your question concerns the McNamara-O'Hara Service Contract Act. That act applies generally to contracts entered into by the United States or the District of Columbia the principal purpose of which is the furnishing of services through the use of service employees. However, the legislative history of the act indicates that contracts with hospitals for the care of patients are not within the scope of this law. The services of service employees under such contracts are considered only incidental to the purpose of such contracts to provide patient care under the continuing supervision of professional medical personnel. Since the principal purpose is to provide medically-supervised care, such contracts are not within the purview of the act. Thus, the act would be inapplicable to an agreement with the Social Security Administration for Medicare services."

The last sentence suggests that the Service Contract Act is inapplicable to all Medicare services. As you may know, these include substantial periods of nursing home care. Nursing home a similar type of professional medical care to that provided in VA hospitals. This program has never contemplated mere custodial or domiciliary care, which is elsewhere provided in our system for a different class of patient.

From its inception we established rigid standards for our program both as to the physical facilities and the professional services to be provided under our contracts. Skilled nursing homes must be licensed by the State in which located, must be accredited by the Joint Commission on Accreditation of Hospitals or approved by the VA through inspection, and must comply with local Government regulations. Our contracts specifically include the following requirements which reflect a maximum of professional supervision at both physician and registered nurse levels:

(a) The skilled nursing home must have a physician to advise the facility on general matters of care and administration. *A physician must provide general supervision of the clinical work and a registered professional nurse must be on duty 40 hours or more per week.*

(b) Medical records in a skilled nursing home must be maintained for each patient and include: (1) *physician's orders;* (2) *physician's admitting evaluation (including diagnosis)*; (3) VA Form 10–1204, Referral for Community Nursing Home Care; (4) *physician's progress notes* (notes of all professional