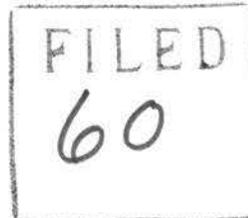


LICENSES: Under Section 1 of H.C.S.H.B. No.
NURSING HOMES: 204, 76th General Assembly, Second
DIVISION OF HEALTH: Regular Session, the Division of
DIVISION OF MENTAL HEALTH: Mental Health is required to adopt
rules for all institutions accept-
ing the mentally retarded including facilities operated by the
Division itself. Homes and institutions which are licensed under
the provisions of Chapter 198 as nursing homes by the Division
of Health and which come within the provisions of Section 2 et
seq., of H.C.S.H.B. No. 204 must also be licensed by the Division
of Mental Health and must conform to the rules and regulations
promulgated by the respective Divisions.

OPINION NO. 60

January 17, 1973



Dr. Harold Robb, Director
Division of Mental Health
Department of Public Health & Welfare
722 Jefferson Street
Jefferson City, Missouri 65101

Dear Dr. Robb:

This opinion is in response to your request in which you
ask:

"a) Do the statutes (Section 202.831 V.A.M.S.
House Bill No. 204, 76th General Assembly,
Second Regular Session) and any proposed rules
or standards issued by the Division of Mental
Health under the statutes apply to state fa-
cilities operated by the state?

"b) Will licenses issued by the Division of
Mental Health be required of nursing homes
having one or more retarded persons where
such homes have already been licensed by the
Division of Health as licensed nursing homes?"

Section 1 of H.C.S.H.B. No. 204, 76th General Assembly,
Second Regular Session, provides:

"The division of mental health shall adopt
reasonable rules, regulations and standards

for all institutions, public or private, which may accept mentally retarded persons for care, treatment and custody. Those rules, regulations and standards shall provide for different types of institutions, and shall be designed to promote and regulate safe and adequate facilities for the care and treatment of mentally retarded persons. The rules, regulations and standards shall particularly provide for

- (1) The admission and commitment of the mentally retarded;
- (2) Their education and training;
- (3) Their general medical and health care;
- (4) Adequate physical plant facilities, including housekeeping and maintenance standards;
- (5) Food service facilities;
- (6) Safety precautions;
- (7) Drugs and medications;
- (8) A uniform system of record keeping; and
- (9) Standards of patients' rights." (Emphasis added)

Section 2 provides:

"The division shall establish a procedure for the licensing of all homes or institutions which accept mentally retarded persons for care, treatment or custody, except those state institutions operated by it. Applications for a license shall be made to the division upon forms provided by it and each application shall contain such information as the division requires, which may include affirmative evidence of ability to comply with the reasonable rules, regulations and standards adopted by the board. Each application for a license, except applications from a governmental unit, shall be accompanied by an annual license fee of seventy-five dollars for establishments which accept less than ten patients, and one hundred fifty dollars from establishments which accept ten or more. All license fees shall be paid to the collector of revenue for deposit in the general revenue fund of the state treasury." (Emphasis added)

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The other sections of the bill provide for application, licensing, revocation, suspension and appeal, and establish an effective date of January 1, 1973 for the licensing of such facilities.

Notably what is now Section 1 of the bill was formerly Section 5 of House Bill No. 1099, 76th General Assembly, Second Regular Session, which did not pass. The latter bill attempted to provide for a separate division of mental retardation and would have created a "board of mental retardation" which would have been empowered to appoint a director of such division and to establish rules, regulations and standards for all institutions, public or private, which accept mentally retarded persons for care, treatment and custody. What was Section 5 of House Bill No. 1099 and the sections which followed Section 5 of House Bill 1099, with minor changes, was introduced and added to and made a part of H.C.S.H.B. No. 204. The only change in Section 5 respecting the adoption of rules was that "board of mental retardation" was deleted and in its place the words "division of mental health" was inserted. Thus it appears from the legislative history of the section in question that the words "all institutions, public or private" was intended to be all inclusive and to include all state institutions which accept mentally retarded persons for care, treatment and custody.

It is true of course that the state and its agencies are not normally within the purview of a statute unless the intention to include them is clearly manifest. This rule was expressed by the Supreme Court of Missouri in Hayes v. City of Kansas City, 241 S.W.2d 888, 892 (Mo. 1951) in which the court citing from 59 C.J.S. 653, pp. 1103-1104, stated:

"The state and its agencies are not to be considered as within the purview of a statute, however general and comprehensive the language of such act may be, unless an intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication. This general doctrine applies with especial force to statutes by which prerogatives, rights, titles, or interests of the state would be divested or diminished; or liabilities imposed upon it; but the state may have the benefit of general laws, and the general rule has been declared not to apply to statutes made for the public good, the advancement of religion and justice, and the prevention of injury and wrong."

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It is our view that the broad language of Section 1, which we have underscored which includes all institutions, public or private, is sufficiently manifest to be within the general rule and includes all institutions of the state, including the institutions of the Division of Mental Health which provide for care, treatment and custody of the mentally retarded. Although the Division of Mental Health is not by name included it was not expressly excepted. By comparison the Division of Mental Health was excepted from the licensing provisions of Section 2 of the same bill thus fortifying our conclusion that there was no legislative intent to exclude the Division from the provisions of Section 1.

Clearly under Section 2, all such state institutions, except as we have noted, the state institutions which are operated by the Division itself, have to be licensed. This is because Section 2 applies to all governmental units and it is our view that if the legislature did not intend to include divisions or departments of state government within the term "governmental unit" it would not have been necessary to expressly except such institutions operated by the Division of Mental Health. It is also notable that many of the provisions of these sections were taken verbatim from Chapter 197, respecting the licensing of hospitals by the Division of Health. However, the term "governmental unit", although defined in Section 197.020, RSMo, as "any county, municipality or other political subdivision or any department, division, board or other agency of any of the foregoing" was not carried into the present bill. We conclude that in the context of the sections in question, the term "governmental unit" was intended to be all inclusive and includes state institutions except those operated by the Division itself.

With respect to your second question, it is our view that the provisions of Chapter 198 relative to the licensing of "nursing homes" as defined therein by the Division of Health and the provisions of H.C.S.H.B. No. 204 provide for the licensing of different types of facilities. It is obvious that the legislature felt a need for separate licensing of homes and institutions caring for the mentally retarded and it is thus clear that homes or institutions which fall under the provisions of Chapter 198, respecting licensing by the Division of Health and which also fall under the provisions of these sections, are required to be licensed by both the Division of Health and the Division of Mental Health and to conform to such regulations as are promulgated under and pursuant to the respective sections.

CONCLUSION

It is the opinion of this office that under Section 1 of H.C.S.H.B. No. 204, 76th General Assembly, Second Regular Session,

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the Division of Mental Health is required to adopt rules for all institutions accepting the mentally retarded including facilities operated by the Division itself. Homes and institutions which are licensed under the provisions of Chapter 198 as nursing homes by the Division of Health and which come within the provisions of Section 2 et seq., of H.C.S.H.B. No. 204 must also be licensed by the Division of Mental Health and must conform to the rules and regulations promulgated by the respective Divisions.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

JOHN C. DANFORTH
Attorney General