MENTAL HEALTH: The Division of Mental Health has authority under the provisions of House Committee Substitute for House Bill No. 204, 76th General Assembly, Second Regular Session (Section 202.831) to use Division appropriations for the care of patients in their own homes or in the homes of relatives and that such homes are not required to be licensed under Section 2 of the Bill. The Division has no authority to make payments directly to patients for their care.

OPINION NO. 111

March 19, 1973

FILED
111

Harold P. Robb, M.D., Director
Division of Mental Health
722 Jefferson Street
Jefferson City, Missouri 65101

Dear Dr. Robb:

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

> "Three questions -- re: HB 204, 76th G.A., Second Regular Session
>
> 1. Can the Division of Mental Health legally pay for care if a person remains in his natural home or a home of a relative?
>
> 2. Is it permissible under this law to pay a patient directly for his care after he has been released from a hospital?
>
> 3. Is it required under these sections that the Division license natural homes of parents or relatives if they are utilized to care for patients where payments is made from such appropriations for patient placement?"

H.C.S.H.B. No. 204, 76th General Assembly, Second Regular Session, to which you refer, is an amendment to Section 202.831, RSMo, and provides in part as follows:

> "1. The head of a state mental facility, with the consent of the person responsible for the commitment of the patient or of one of the parents, if living, having been first obtained,

may place any patient, except those committed as criminally insane, in a licensed boarding, or licensed nursing home or family home upon such terms and conditions as he deems proper when he believes that such family care would benefit the patient. If the patient so placed is ineligible to receive public assistance benefits from the division of welfare, or such benefits are inadequate to meet the costs of such care, the monthly costs may be paid or supplemented out of funds appropriated for that purpose to the division of mental health; but the payment for such care shall not exceed the average per capita cost of maintenance for the prior fiscal year of patients in the state facility from which he is transferred. The payment made by the parent or guardian for such care shall not exceed the amount paid the state hospital.

"2. The division shall arrange for or make inspections and visits in the home in which the patient has been placed, provide adequate medical care, and may, with the consent of the person responsible for the commitment of the patient or of one of the parents, if living, return the patient to the facility or place him in another home when deemed advisable.

"3. The placement of a patient is a licensed boarding or licensed nursing home or family home shall be considered as a conditional release from the facility but shall not relieve the county of the patient's residence or those responsible for the support of a private patient, as the case may be, from the obligations imposed upon them by law for the support and maintenance of the patient if payments are made from funds appropriated to the division of mental health for such care.

"4. The division of welfare through its county welfare offices shall cooperate with the state mental facilities and the division of mental health in locating licensed boarding or licensed nursing homes or family homes, making visits and inspections in such homes, and submitting reports regarding the homes and patients placed therein."

Although you have not raised the point in your question, it should first be noted that the placement of a patient in a family home is not dependent upon the question of whether or not he is a private, county or state patient. This is obvious from a reading of subsections 1 and 3 of Section 202.831 as amended. That is, although patients of the facilities of the Division of Mental Health are classified as private, county or state patients under Section 202.863, RSMo, and are charged for their care if they are private patients under Section 202.330, RSMo, the provisions of Section 202.831, with respect to placing such patients in family homes, indicate that funds appropriated to the Division of Mental Health may be used within the limitations of subsection 1 of Section 202.831 for such support and maintenance in such a home whether or not the patient is a county patient or a private patient. However, in such case neither the county nor the persons responsible are relieved from the ultimate liability imposed upon them by law for the care of such patients.

Turning to your first question asking whether the Division of Mental Health can legally pay for the care of a patient in his natural home or the home of a relative, we note that Section 202.831 does not define "family home." We know of no other definition in the laws of this state which would be applicable and it is our view that "family home" refers simply to a family place of abode. In this respect the rule of construction under Section 1.090, RSMo, is that words shall be taken in their plain and ordinary and usual sense unless they are technical words having a technical import. Here the words "family home" have no technical import and can be taken in their ordinary sense. Clearly, however, until the 1967 amendments to Section 202.831, noted below, "family home" meant something other than the patient's own home or a relative's home. The present meaning includes any such home without regard to relationship.

Section 202.831, RSMo 1959, provided in part:

> "1. The head of a state mental hospital may place any patient, except those committed as criminally insane, in a suitable boarding, licensed nursing home or family home other than his own home or that of any person related to him within the fourth degree, by consanguinity or affinity upon such terms and conditions as he deems proper when he believes that such family care would benefit the patient. If the patient so placed is ineligible to receive public assistance benefits from the division of welfare, or such benefits are inadequate to

> meet the costs of such care, the monthly costs may be paid or supplemented out of funds appropriated for that purpose to the division of mental diseases; provided, however, that payment for such care shall not exceed the average per capita cost of maintenance for the prior fiscal year of patients in the state hospital from which he is transferred." (emphasis added)

The portion of the 1959 laws prohibiting placement in the patient's own home or in a relative's home, which we have underscored above, was deleted by the Laws of 1967, p. 295; and as can be seen, no such prohibition was included in the last amendment, H.C.S.H.B. No. 204, which we have quoted in the beginning of this opinion. Therefore, it is obvious that the legislature fully intended to remove any restriction with respect to the placement of the patient in his own home or in the home of any person related to him.

We therefore conclude, in answer to your first question, that the Division of Mental Health can legally pay for care of such a patient even though he is placed in his own home or in the home of a relative.

Your second question asks whether it is permissible to pay a patient directly for his care after he has been released from a hospital. We find no authority for the Division to make direct payments to a patient for his care.

Your third question asks whether the Division of Mental Health must license homes of parents or relatives if such homes are utilized to care for patients where payment is made from Division appropriations for patient placement.

The licensing provisions which are also contained in H.C.S.H.B. No. 204, 76th General Assembly, Second Regular Session, require that the Division of Mental Health ". . . 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. . . ." The Division is further required to promulgate rules with respect to such institutions or homes and to require certain annual license fees.

It is axiomatic that in determining the construction of statutory provisions we must first determine what the legislature intended and avoid a construction which would arrive at an absurd result.

Our conclusion in this respect is that the legislature intended that the Division license homes which accept one or more mentally retarded persons and that the word "accept" was intended to limit the licensing requirement to homes accepting unrelated persons for care. We do not believe that the legislature by any means intended that private homes which care for members of the family, in their own normal family setting, should be licensed. Therefore, it is our view that the legislature did not intend to require the licensing of private homes simply because one or more members of the family are retarded.

We conclude, then, in answer to your third question, that the licensing requirements do not apply to natural homes and that the mere fact that appropriations of the Division of Mental Health are used to sustain a patient in his own home or in a relative's home does not mean that the patient is accepted on a commercial basis and the home subject to licensure. However, under subsection 2 of Section 202.831 such homes in which patients are placed by the Division must be inspected by the Division

We do not attempt to define what you mean by "relatives" with respect to your reference to placement in a relative's home. In this respect the underscored portion of the 1959 provision of Section 202.831, which referred to relationship within the fourth degree by consanguinity or affinity, would at least provide a guideline in determining whether or not a legal relationship exists so as to exclude such a home from the licensing requirements.

CONCLUSION

It is the opinion of this office that the Division of Mental Health has authority under the provisions of House Committee Substitute for House Bill No. 204, 76th General Assembly, Second Regular Session (Section 202.831) to use Division appropriations for the care of patients in their own homes or in the homes of relatives and that such homes are not required to be licensed under Section 2 of the Bill. The Division has no authority to make payments directly to patients for their care.

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

Yours very truly,

JOHN C. DANFORTH
Attorney General