

NURSING HOMES:
LICENSE FEES:

The only fee required to be paid by the operator of a nursing home is a fee for a license to operate. A license to operate a nursing home should be issued and dated as of the time the home was found acceptable for licensure.

February 25, 1960



H. M. Hardwicke, M. D.
Deputy Director
Division of Health
Jefferson City, Missouri

Dear Dr. Hardwicke:

Your recent request for an official opinion reads:

"At the time that the nursing home licensing law was implemented in the State of Missouri, a very small percentage of the operating homes were immediately eligible for license. Many operators sent the fee necessary under the law for the issuance of a permit to the Division of Health before they were eligible for licensure. Monies received in this fashion were deposited by the Division of Health to the nursing home licensing fund.

"There has arisen a question in relation to the nursing home licensing law upon which we respectfully request your opinion. Is it incumbent upon the operator of a nursing home to pay a yearly fee for the privilege of operating such home or is the fee paid for the privilege of receiving a license to operate?

"This question, therefore, breaks down into two parts:

"1. The operator of a nursing home submits the appropriate fee for a license to the

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Division of Health. If personnel of the Division of Health find that the nursing home in question is not immediately eligible for licensure, the operator of the home is cooperating and attempting to improve to the point where it may be licensed, the fee is held by the Division of Health. After a period of one year the home becomes licensable. Should the Division of Health re-bill the operator for an additional annual fee even though no license could be issued during the preceding twelve months?

"2. A home applies for a license and is found ineligible, but capable of becoming eligible. After the passage of a certain amount of time, the home is found eligible for licensure. Should the license be issued and dated as of the time the fee was submitted or should the license be dated as of the time the home was found acceptable for licensure?

"This second question is of importance both to the nursing home operator and to the Division of Health. If a home is found ineligible because of its own shortcomings for license and there occurs during the period of time which the home is unlicensed a regrettable incident which may provoke civil action against the operator, the operator feels that he has less protection against such civil action than he would have had, had the license been issued retroactive to the date of application.

"This second question is important to the Division of Health since the nursing home licensure fund would be increased were we in a position to re-bill the operator."

That portion of the law relating to licenses for nursing homes and the payment of license fees is found in Sections 198.021 through 198.031, MoRS Cum. Supp. 1957. These sections read:

198.021

"After ninety days from the date this law becomes effective, or at the expiration of any license issued under a prior law, no person shall establish, conduct or maintain a nursing, convalescent or boarding home in this state without a license issued under this law by the division of health of the department of public health and welfare."

198.025

"1. A license unless sooner revoked or suspended shall be renewable annually upon receipt of the annual license fee from the licensee and approval for renewal by the division of health.

"2. Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable, except with the written approval of the division of health. A separate license shall be required for homes maintained in separate premises, even though operated under the same management, provided a separate license shall not be required for separate buildings on the same grounds.

"3. Licenses shall be posted in a conspicuous place on the licensed premises."

198.031

"1. Application for a license shall be made to the division of health upon forms provided by it. The application shall be under oath and shall contain:

(1) The name and address of the applicant if an individual, and if a firm,

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partnership or association, of every member thereof, and in the case of a corporation the name and address thereof and its officers;

(2) The location of the home for which a license is sought;

(3) The name of the person or persons under whose management or supervision the home will be conducted;

(4) The number and type of residents for which maintenance, care or nursing is to be provided; and

(5) Such information relating to the number, experience and training of the employees of the home and the moral character of the applicant and employees as the division may deem necessary.

"2. Each application shall be accompanied by a statement relative to the financial status of the applicant, and in areas having a zoning law or ordinance, a statement from the local authorities having jurisdiction that the home's location does not violate the zoning law or ordinance.

"3. Upon approval an annual license fee of twenty-five dollars for establishments with less than fifty beds and fifty dollars for establishments with fifty beds or more shall be paid to the collector of revenue and deposited in the state treasury to the credit of the nursing home licensing fund, which is hereby created. The nursing home licensing fund shall be subject to appropriations by the general assembly which, together with any appropriations from general revenue, shall be used for the purpose of carrying out this law."

From the above law it would seem to us clear that the fees of \$25 and \$50 required to be paid for the operation of various

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sizes of nursing homes, set forth in numbered paragraph 3 of Section 198.031, supra, are payment for the license. There is no provision whatever in the law for, as you state in your letter, "the privilege of operating such home", separate and apart from the fee paid for the license.

Therefore, the answer to your first question would be that money which has been received by the Division of Health from the applicant for a license, which fee has been held by the Division for the period of a year without the issuance of a license, should be regarded as money tendered for a license. Certainly the Division of Health should not re-bill the operator for an additional annual fee.

In regard to your second question, it would be our thought that there was no ground for issuing and dating a license as of the time the fee was submitted but rather that the license should be issued and dated as of the date the home was found acceptable for licensure.

CONCLUSION

It is the opinion of this department that the only fee required to be paid by the operator of a nursing home is a fee for a license to operate. It is the further opinion of this department that a license to operate a nursing home should be issued and dated as of the time the home was found acceptable for licensure.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton
Attorney General

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