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ATTORNEY GENERAL OPINION NO. 82-89

The Honorable James L. Francisco  
State Senator, Twenty-Sixth District  
Room 136-N, Statehouse  
Topeka, Kansas 66612

Re: Mentally Ill, Incapacitated and Dependent Persons --  
Adult Care Homes -- Boarding Care Homes; Similarity  
to Adult Family Homes; Distinction from Adult  
Family Homes

Synopsis: As part of the Alternate Care Services program of  
the Department of Social and Rehabilitation Ser-  
vices, adult family homes have been established  
which provide community-based living facilities  
for elderly or disabled individuals who can no  
longer live independently. In that adult family  
homes do not provide nursing care, they are dis-  
tinguishable from most forms of adult care homes,  
which are licensed by the Department of Health  
and Environment. However, in that they do offer  
the same type of services as do boarding care  
homes (a type of adult care home), adult family  
homes serving 3 or more clients are required to  
be licensed by the Department of Health and En-  
vironment before operating. Cited herein: K.S.A.  
39-923, K.S.A. 1981 Supp. 75-3307b.

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Dear Senator Francisco:

As State Senator for the Twenty-Sixth District, you request  
our opinion on a question concerning facilities for the care  
of the elderly and disabled. Specifically, you inquire whether  
the adult family home program administered by the Department  
of Social and Rehabilitation Services (SRS) is subject to  
the provisions of K.S.A. 39-923 et seq., the Adult Care Home  
Licensure Act.

Initially, we note that the adult family home program is part of Alternate Care Services, which was authorized by the 1981 Legislature and implemented on a statewide basis on December 1, 1981. As Alternate Care Services is merely part of a general appropriation to SRS, no specific statutes or administrative rules and regulations exist which authorize the adult family home program or define its parameters. Rather, the program operates through the Alternate Care Handbook, an SRS document which defines department procedures for adult family homes. The handbook also establishes conditions which must be met as a prerequisite to the receipt of payments by the operators of such facilities. These payments, it may be observed, are made to the provider as a supplement to those funds provided by the individual client, according to a rate schedule set out in the handbook.

Further, we note from the handbook that the homes selected to participate in the program are limited to a maximum of four clients at any one time, and additionally must meet other specified requirements concerning the health, safety and supervision of the clients. There are no sections regarding the rendering of health care or nursing services. Indeed, the provider of the home is limited to rendering the following health-related assistance:

"#6. All medicine shall be kept safely away from where it may be used by irresponsible persons. The operator may assist residents with the taking of medications only when: (1) the medication is in a pharmacy-labeled bottle which clearly shows physician's orders and (2) when the resident requires assistance because of tremor, visual impairment, or similar reasons due to health conditions not requiring the exercise of professional judgment. The provider, with appropriate training, may assist or perform for the resident those physical activities/tasks which do not require daily medical supervision such as: insulin injection, bathing, dressing, help with brace or walker, transferring from wheelchairs."  
(Emphasis original.)

. . . .

"#25. The provider shall help [the] client arrange for emergency and regular medical care when necessary from a physician of the client's choice."

Such guidelines may be compared with the statutes and regulations which govern adult care homes. At K.S.A. 39-923 et seq., are a series of statutes which set forth strict and detailed requirements for such facilities, which range in size from one-bed to many beds, and from simple up to skilled levels of nursing care. With the exception of "boarding care homes," each facility that is defined contains a designation of the type of nursing care which must be provided. For example, an "intermediate personal care home" is defined at K.S.A. 39-923(a)(4) to involve the giving of "simple nursing care," which itself is defined at subsection (a)(10). Other facility definitions are likewise linked to the offer of "skilled nursing care" [defined at (a)(8)] and "supervised nursing care" [(a)(9)].

The sole exception to the above is found at K.S.A. 39-923(a)(6), wherein boarding care homes are defined as including

"any place or facility operating for not less than twenty-four (24) hours in any week and caring for three (3) or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage who by reason of aging, illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves and for whom reception, accommodation, board and supervision is provided and which place or facility is staffed, maintained and equipped primarily to provide shelter to residents who require some supervision, but who are ambulatory and essentially capable of managing their own care and affairs."

This definition may be compared with the statement of purpose contained at the beginning of the adult family home section of the Alternate Care Handbook issued by SRS. There, it is stated:

"This program provides a homelike living situation to assist elderly and/or disabled clients unable to live independently because of handicapping mental and/or physical conditions. Adult Family Homes represent a less restrictive alternative for community living, and may enable clients to live within their home communities with a minimum of supervision and guidance." (Emphasis supplied.)

Further, in the section on the general philosophy of alternate care, we find the following statement:

"This program along with the pre-admission screening program is for the purpose of filling an identifiable gap in the continuum of care. There is a lack of services for elderly and/or disabled persons who require less than medical care facilities offer, but need more supervision than total independent living affords. Alternate Care Services enable clients to remain in the community and live in the least restrictive environment their health will allow." (Emphasis supplied.)

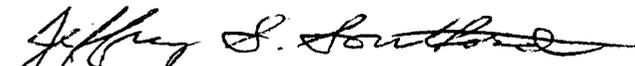
In our opinion, the services offered by the adult family home program resemble those provided in a boarding care home as defined by K.S.A. 39-923(a)(6). While the absence of nursing care differentiates an adult family home from the other types of adult care homes defined at K.S.A. 39-923, the definition of boarding care homes is silent as to any level of nursing care which must be afforded. Indeed, this latter definition speaks specifically to those persons who need some supervision, due to age or physical or mental infirmity, but who are still basically able to care for themselves. Our reading of the alternate services manual indicates that no real distinction can be made between the degree of care offered in adult family homes and in boarding care homes. Accordingly, in our opinion, the licensure requirements of K.S.A. 39-923 et seq. would apply to adult family homes serving 3 or more clients.

In conclusion, as part of the Alternate Care Services program of the Department of Social and Rehabilitation Services, adult family homes have been established which provide community-based living facilities for elderly or disabled individuals who can no longer live independently. In that adult family homes do not provide nursing care, they are distinguishable from most forms of adult care homes, which are licensed by the Department of Health and Environment. However, in that they do offer the same type of services as do boarding care homes (a type of adult care home), adult family homes serving 3 or more clients are required to be licensed by the Department of Health and Environment before operating.

Very truly yours,



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