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April 1, 1966

Dean Fisher, M. D., Commissioner

Health and Welfare

George C. West, Deputy

Attorney General

Nursing Home Definition Under P. L. 1965, Chapter 403.

Reference is made to your memo of July 15, 1965, asking several questions concerning P. L. 1965, chapter 403.

QUESTION NO. 1:

What is meant by "in connection with a hospital?" Does this mean a part of the corporate structure of the hospital? Is this intended to mean a relationship by which the Board of Directors of the hospital assumes responsibility for the quality of care and the standards of operation of the nursing home in view of what appears to be an alternative control of quality, to wit, "or in which nursing care" etc. "are prescribed by persons licensed" etc.

OPINION NO. 1:

This question relates to the first sentence of P. L. 1965, chapter 403, which reads:

"a nursing home shall be defined as a facility which is operated in connection with a hospital, or in which nursing care and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in the State, for the accommodation of convalescent or other persons who are not acutely ill and not in need of hospital care, but who do require skilled nursing care and related medical services."

There are two types of nursing homes described in this one sentence. First, is a "nursing home * * * operated in connection with a hospital." Such a nursing home may be owned and operated within the corporate structure of a hospital. It would be part of the hospital's overall plan for medical services to patients. This is a part of the type of hospital which is set up on a functional basis. The patient is placed in that portion of a hospital which is properly equipped to handle his special medical needs. For example, at a certain stage following an operation, a patient needs less intense medical care so the hospital would move him to its nursing home for the convalescent stage.

On the other hand, such a nursing home may be outside the hospital's corporate structure but having a close working relationship with the hospital. We would believe that in order to be considered "in connection with a hospital" both must have at least an interlocking directorship and be operated very similar to parent and subsidiary corporations. A nursing home operated under separate ownership and receiving patients by referral only would not be "operated in connection with a hospital."

Second, is a nursing home "in which nursing care and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in the State, * * * * This nursing home would be operated completely independent of a hospital. It would require a licensed physician or physicians directing or performing medical services. Nursing care would be directed by such licensed persons.

Both types of nursing homes are, of course, related to the care of persons who "are not acutely ill and not in need of hospital care but do require skilled nursing care and related medical services."

QUESTION NO. 2:

Does the "operated in connection with a hospital" (meaning general hospital, I presume) limit us in the further requirements that we might make for licensing purposes?

ANSWER NO. 2:

No.

OPINION NO. 2:

If we understand the question correctly, our answer is "no." The phrases "operated in connection with a hospital" merely refers to the legal structure of the administration of a nursing home. We can see no reason why that fact would limit you in the further requirements you might make for licensing purposes.

Your standards for this type of nursing home would be the same as for the second designated type so far as we could foresee. Standards are a matter of administration.

QUESTION NO. 2:

What is meant by "performed under the general direction of" etc.? Does this mean a single consultant physician, exercising

general direction of all nursing kinds of responsibilities in the nursing home? What does this mean in relationship to patients who have private physicians? Does assuring ourselves that each patient has a physician fulfill this requirement? If so, do we then have to define what constitutes "general direction" in so far as the private physician is concerned?

OPINION NO. 3:

As you have asked several different questions, we cannot give a "yes" or "no" answer. Actually, the answer is tied in with the second part of our answer to Question No. 1.

"Performed under the general direction of" etc. can mean a staff physician or it can refer to a private physician attending a given patient. If a patient has a regular physician, you need not require a staff physician to direct the care of that patient.

It is not material whether the physician be a staff member or in a private capacity; the department would still have the responsibility of defining "general direction" in determining whether the nursing home qualified for a license.

QUESTION NO. 4:

Does the phrase "or in which nursing care and medical services are prescribed" etc. limit us in making further requirements for licensing purposes?

ANSWER NO. 4:

No.

OPINION NO. 4:

This is substantially the same as No. 2 and the same general principle applies.

QUESTION NO. 5:

Is the second sentence simply a continuation of the definition of a nursing home, or is there a conflict between these two sentences? If the latter, which takes precedence?

OPINION NO. 5:

We believe the second sentence is really a further limitation upon the first sentence. It simply limits the definition to places

having the purposes set forth therein, i.e., (1) providing skilled nursing care and related medical services; (2) on a 24-hour basis; (3) to individuals admitted because of (a) illness, (b) disease, or (c) physical infirmity or (d) mental infirmity and (4) provides a community service. You will note the phrase "skilled nursing care and related medical services" is used in both sentences.

We believe the intent is to affirm more positively the latter part of the first sentence. Also it attempts to eliminate from the nursing home category those places which give a service to persons who are not ill but do need some degree of custodial care. Persons suffering only from age and lack of relatives willing and able to care for them would not be in the class eligible for nursing home care.

There is no conflict between the two sentences.

QUESTION NO. 5:

Can all of chapter 403 be circumvented by the simple device of calling an institution by some name other than "nursing home?" Or, can chapter 403 be construed in any way as prohibiting the provision of "skilled nursing care" by any institution not calling itself a nursing home?

ANSWER NO. 5:

(a) No.

(b) No.

OPINION NO. 6:

(a) Actually the name of the institution is not material. It is the function which is the determinative factor.

(b) "Skilled nursing care" should not be needed in an institution not a nursing home except in cases of emergency. The above phrase is related to ill persons and the requirement of such care on a 24-hour basis. However, there is nothing in the law which prohibits another type of institution from having "skilled nursing care" available when needed. If all or any patients need such care on a continuous basis, then the institution becomes a "nursing home."

QUESTION NO. 7:

What constitutes "skilled nursing care" in terms of the qualifications of those giving care? I presume we shall need to define this term for licensing purposes.

OPINION NO. 7:

The answer to this question appears to be answered in 32 M.R.S.A. section 2102, subsections 2 and 3, which read as follows:

"2. Professional Nursing. The practice of 'professional nursing' means the performance for compensation of any of the services which necessitate the specialized knowledge, judgment and skill required for the application of nursing as based upon principles of biological, physical and social sciences in the:

- A. Observation and care of the ill, injured or infirm;
- B. Maintenance of health or prevention of illness of others;
- C. Supervision and teaching of other personnel;
- D. Administration of medications and treatment as prescribed by a licensed physician or dentist. The foregoing shall not be deemed to include diagnosis of illness or the prescription of therapeutic or corrective measures.

"3. Practical nursing. The practice of 'practical nursing' means the performance for compensation of services in the care of the ill, injured or infirm as selected by and under the direction of a registered professional nurse or a licensed physician or dentist which do not require the substantial specialized skill, judgment and knowledge required in professional nursing."

From these two subsections, the statutes appear to state that both professional and practical nursing constitute "skilled nursing care." The intent being expressed that professional nursing implies a "specialized knowledge, judgment and skill." On the other hand,

practical nursing "do(es) not require the substantial specialized skill, judgment and knowledge required in professional nursing." In short, both constitute "skilled nursing care" and vary only in degree of skill.

Also it should be pointed out that only in "professional nursing" may supervisory functions be performed. "Practical nursing" should only be performed "under the direction of a registered professional nurse or a licensed physician or dentist."

Attention should be called to section 2103, subsection 5, of the same title, which states:

"This chapter does not prohibit: * * *

- "3. The practice of 'practical nursing,' as defined in section 2102, subsection 3, by unlicensed persons."

The conclusion must be drawn from this provision that "skilled nursing care" may be performed by an unlicensed practical nurse as long as her actual work does not involve fields reserved specifically for the professional nurse and is confined to the areas outlined in section 2102, subsection 3.

DEFINITION NO. 2:

What is a "community service"? It is an essential component of the definition of a "nursing home," and thus I presume we shall need to further define the term for licensing purposes.

DEFINITION NO. 3:

In order to understand the meaning of the words "community service" it is necessary to look at the source of the legislative definition of "nursing home" as enacted by P. L. 1965, c. 403. The definition was lifted in toto from "State of Maine Hospital and Medical Facilities Survey and Construction Plan," Annual Revision 1964-65. This booklet was published by the Department of Health and Welfare. The purpose was to acquaint people with the Hill-Burton program for construction of hospitals and health facilities, its plans, programs and progress.

The definition of a "nursing home" was set up as a portion of the statistical report covering "Long-Term Care Facilities." In order to make a statistical report it was necessary to define terms to be used.

In setting forth definitions the phrase "community service" was used in relation to several types of institution. The phrase itself was defined as follows:

"A facility provides a community service when (1) the services furnished are available to the general public or (2) admission is limited only on the basis of age, medical indigency, or medical or mental disability, or (3) the facility constitutes a medical or nursing care unit of a home or other institution which is available in accordance with sub-paragraph (1) or (2) of this paragraph."

It seems to us that this definition answers your question. Further definition or comment does not appear necessary.

George C. West
Deputy Attorney General

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