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Honorable Allen Gordon
State Senator
105 South Moose
Morrilton, AR 72110

This letter is in response to your request for an Attorney General's Opinion on the validity of Regulation 1901, §4 of the Office of Long Term Care. You ask if this regulation is a proper interpretation of Ark. Stat. Ann. §82-328 and if it is a valid classification.

Initially, §82-328 is only a definition section which originally applied to the Department of Health. The regulation of long-term care facilities was transferred to the Division of Social Services, Office of Long Term Care in 1979 by Ark. Stat. Ann. §82-2208, et seq. "Long Term Care Facility" was defined as a nursing home, boarding home, or other facility which provides long term medical or personal care. Ark. Stat. Ann. §82-2216. A 1985 amendment substituted "residential care facility" for "boarding home" in this definition. Before this amendment, the term "residential care facility" had not been used as a separate classification.

Pursuant to this amendment, the Office of Long Term Care promulgated rules and regulations for the operation of residential care facilities as a separate classification. There were already rules and regulations for the operation of three classes of nursing homes, based on the amount of nursing care and supervision required. Residential Care Facilities were created to serve patients who do not need the constant medical attention of nursing home patients and who, for the most part, take care of themselves. This is consistent with Ark. Stat. Ann. §82-2217, which requires effective management and coordination of long term care facilities to eliminate overlapping and duplication of efforts.

Regulation 1901, §4 prohibits an owner or employer from administering medications. This is only one of several differences between a nursing home and a residential care facility. Regulation 500 states that the residents must be

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independently mobile, able to self-administer medications, and do not require nursing care. If the patient can not meet these criteria, then he should be placed in a nursing home.

Nursing homes, unlike residential care facilities, are required to provide nursing and medical care and are subject to more strict regulations and closer scrutiny for compliance. If residential care facilities were allowed to administer medications, a nursing function, then they would, in essence, be functioning as a minimum care nursing home. This may violate the overlapping and duplication of effort prohibitions of §82-2217.

In summary, Regulation 1901, §4 is an essential part of the definitional difference between nursing homes and residential care facilities. As such, it is a valid classification.

The foregoing opinion which I hereby approve was prepared by Assistant Attorney General Charles R. Lucas.

Sincerely,


STEVE CLARK
Attorney General

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