OFFICIAL OPINION NO. 42

October 14, 1957

A. C. Offutt, M. D.
State Health Commissioner
Indiana State Board of Health
1330 West Michigan Street
Indianapolis, Indiana

Dear Doctor Offutt:

Your letter of September 5, 1957, has requested an Official Opinion as to whether or not the Acts of 1957, Ch. 136, concerning the licensing of "nursing homes," includes "non-profit" homes.

It is to be remembered by the Acts of 1947, Ch. 172, as found in Burns' (1952 Repl.), Sections 42-1418 to 42-1447, both inclusive, that the primary authority and responsibility for licensing "nursing homes," as defined by said act, lodged in the State Department of Public Welfare, together with the responsibility of administering said act.

Said 1947 act was superseded by the Acts of 1957, Ch. 136, as found in Burns' (1957 Supp.), Sections 42-1448 to 42-1464, both inclusive, and by the Acts of 1957, Ch. 134, as found in Burns' (1957 Supp.), Section 42-1418n, by which the jurisdiction, rights, powers, obligations, administrative duties and funds used in the administration of the Nursing Home Licensing Act of 1947, as amended, were transferred from the State Department of Public Welfare to the Indiana State Board of Health.

The term "nursing home" as defined by the Acts of 1957, Ch. 136, Sec. 3(a), supra, is substantially the same as the definition found in Acts of 1947, Ch. 172, Sec. 1(a), supra, with the noted exception of the underlined portion as indicated in the following 1957 definition:

"The term 'nursing home' means and shall be construed to include any building, structure, agency, institution, or other place, for the reception, accommodation, board, care or treatment not less than twenty-four [24] hours in any week of one [1] or more unrelated individuals hereinafter designated patients, who are
unable sufficiently or properly to care for themselves, and for which reception, accommodation, board, care or treatment a charge is made: Provided, however, that the reception, accommodation, board, care or treatment in a household or family, for compensation, of a person related by blood to the head of such household or family, or to his or her spouse, within the degree of consanguinity of first cousins, shall not be deemed to constitute the premises in which person is received, boarded, accommodated, cared for or treated, a nursing home. The term ‘nursing home’ shall include, but not in limitation thereof, homes for the aged, boarding homes, homes for the infirm or chronically ill and convalescent homes. The term ‘nursing home’ shall not include institutions operated by the Federal or State governments or any municipal corporation, hospitals, institutions for the treatment and care of psychiatric patients, boarding homes for children, day nurseries, child-caring institutions, children’s homes and child-placing agencies, as defined under the laws of this State, nor hotels or offices of physicians.” (Our emphasis)

Acts of 1947, Ch. 172, Sec. 26, as found in Burns’ (1952 Repl.), Section 42-1443, exempted certain hospitals, homes and institutions in the following language:

“Nothing in this act shall be construed to apply to any general hospital, home or institution conducted by any religious body or denomination or regularly organized patriotic, fraternal or charitable organization; and no rules, regulations or standards shall be made or established under this act for any sanatorium, nursing home, or rest home conducted in accordance with the practice and principles of the body known as the Church of Christ, Scientist, except as to the sanitary and safe conditions of the premises, cleanliness of operation, and its physical equipment.”

Said exemption provision is not contained in the Acts of 1957, Ch. 136; however, Sec. 3 (a) thereof, as found in Burns’, Section 42-1450, supra, does specifically exempt “institutions operated by the federal or state governments or any municipal corporation, hospitals, institutions for the treatment and care
of psychiatric patients, boarding homes for children, day nurseries, child-caring institutions, children's homes and child-placing agencies, as defined under the laws of this State, nor hotels or offices of physicians."

Said section further provides that "the term 'nursing home' shall include, but not in limitation thereof, homes for the aged, boarding homes, homes for the infirm or chronically ill and convalescent homes."

The term "non-profit homes" is not defined or specifically referred to as such in the 1957 Nursing Home Act. Therefore, it is only necessary to determine if such homes are included in the definition of "nursing home," as defined by said act.

It would appear that a non-profit home, which otherwise qualifies under the definition stated in the Acts of 1957, Ch. 136, Sec. 3(a), supra, would not only be eligible for licensing under said act, but must be licensed thereunder, unless excluded because a charge is not made by the establishment for the reception, accommodation, board, care or treatment of its patients, designated by the act.

It should be noted that the 1947 Nursing Home Act, supra, also contained the provision "and * * * a charge is made," and that while said act was in effect some of the so-called "non-profit homes," which were operated by and for religious or benevolent societies, were not licensed under said act (probably due to the fact that they made no charge for their services), but operated on an "approval" basis, which enabled the Department of Public Welfare to pay old age assistance to the clients of such approved homes. Such "approval" was authorized by Regulation 8-102 of the State Department of Public Welfare (page 91, 1954 Additions and Revisions to Rules and Regulations).

It is my opinion, in light of the express language found in Sec. 3 (a) of the 1957 Nursing Home Act, supra, and the procedure followed by the State Department of Public Welfare while operating under the 1947 Nursing Home Act, supra, that
a so-called "non-profit home" which otherwise comes within the statutory definition of a nursing home in accordance with the Acts of 1957, Sec. 3(a), supra, but does not make a charge for the reception, accommodation, board, care or treatment of patients, contemplated by said act, is not subject to licensure under the provisions of said 1957 Act.

Conversely stated it is my opinion that a "non-profit" establishment, which actually makes a charge for the services set forth in the 1957 Act, is subject to the licensure provisions thereunder. It should be noted that the services enumerated in the act are in the disjunctive, and not in the conjunctive. (1944 O. A. G., page 4, No. 2.)

The next question to be decided is what constitutes a "charge" as contemplated by the 1957 Act, Sec. 3(a), supra.

Neither the 1947 nor the 1957 Nursing Home Licensing Acts define a "charge," therefore, according to the statutory rule of construction, found in the Acts of 1852, Ch. 17, Sec. 1, as found in Burns’ (1946 Repl.), Section 1-201, "Words and phrases shall be taken in their plain, or ordinary and usual sense * * *", unless a contrary purpose is clearly manifest.

Webster’s New International Dictionary defines "charge" as: "* * * Pecuniary burden; expenses * * * the price demanded for a thing or service."

In my opinion, the term "charge," as employed in the 1957 Nursing Home Licensing Act and when used in the plain, ordinary and usual sense, contemplates a reasonable remuneration for the rendering of services enumerated in said act. Accordingly, any applicant for a nursing home license has the burden of establishing to the satisfaction of the State Board of Health, and the Indiana Nursing Home Council, that a bona fide charge is or is not being made by it for the reception, accommodation, board, care or treatment of its patients.