



STATE OF IDAHO

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July 23, 1987

Lewis County Commissioners  
Lewis County Courthouse  
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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Dear Sirs:

This is in response to your letter of December 8, 1986, asking which remedies are available when shelter home operators are suspected of taking all money shelter residents receive, rather than just those portions of the residents' public assistance grants designated for room and board. I am terribly sorry for the delay in this response. We asked the department of health and welfare for their views on this matter on December 15, 1986. Their response arrived here on June 29, 1987. We have reviewed their materials and can now respond to your inquiry.

The rules and regulations for shelter homes in Idaho, title 2, chapter 4, of the Rules and Regulations of the Department of Health and Welfare, § 16.02.4200.07.c, provide that:

The facility cannot require the residents to purchase goods or services from the facility for other than basic room and board. For those residents who receive public assistance, the facility's basic room and board charge shall not exceed that portion of the resident's public assistance grant designated for room and board.

This subparagraph is contained in § 02.4200 governing the administration of a shelter home operation which prescribes the organizational structure, operating mechanism and policies for a shelter home. This does not authorize the department to intervene into this area; rather, the department's authority is to insure that these policies and procedures are in place before licensure. The department may not act upon an alleged violation of this particular policy unless there is specific information indicating a specific violation. Shelter homes are not audited

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by the Division of Welfare as are nursing home operations under the Medicaid program. They are annually inspected by the Division of Health, Licensing and Certification Bureau, which reviews for program content only.

Along the same lines, providers of shelter homes are not reimbursed as are providers of nursing homes, which involves an audit and review of their financial dealings. Rather, shelter home residents receive direct grants and are responsible for paying appropriate charges. In other words, the department lacks a mechanism to investigate general complaints of this nature. There is, however, no prohibition to the commissioners' authorizing the prosecuting attorney of the county to conduct an investigation if they have evidence of a violation of the rights of a shelter home resident. In fact, pursuant to § 02.4806, regarding resident funds, subparagraph 01 requires the shelter home to give access to records of the resident's funds upon request by the resident or his advocate or guardian. Therefore, another avenue that could be pursued is that if specific information exists which would indicate a criminal violation, a referral could be made to the county prosecutor.

In summary the department may only receive complaints and, during its annual inspection of the facility, determine whether or not the license of this particular shelter home operator should be revoked or suspended. As licensing is a property right which is afforded due process protections, the department would have to have substantial competent evidence showing the existence of a violation prior to initiating any license revocation proceeding.

If we can be of further assistance on this matter, please contact us.

Very truly yours,



PATRICK J. KOLE  
Chief, Legislative and  
Public Affairs Division

PJK/tg