

The State of South Carolina



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September 18, 1991

The Honorable James L. Solomon, Jr., Commissioner
South Carolina Department of Social Services
Post Office Box 1520
Columbia, South Carolina 29202-1520

Dear Commissioner Solomon:

You have asked whether Proviso 43.7 of the Fiscal Year 1992 State Appropriations Act gives the South Carolina Department of Social Services the authority to limit a facility's enrollment of Optional Supplement clients. You also ask whether limiting the number of requests by facility would be violative of state or federal law. 1/ We concur with the opinion of your counsel that the proviso allows for the establishment of a maximum number of individual recipients. The provision states that the individuals are those "who reside in...licensed residential care facilities that have an approved Optional Supplement Request with the Department." Proviso 43.7 of Act 171 of 1991 Acts and Joint Resolutions. Proviso 43.7, concerning the Optional State Supplement to Medicaid recipients under South Carolina's Residential Care Facilities Program, states in pertinent part that:

1/ In considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond a reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. Of course, it is ultimately within the province of the courts of this State to declare an act unconstitutional, but until such time, we presume the constitutionality of the proviso.

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...the Department will supplement the income of individuals who reside in those licensed residential care facilities that have an approved Optional Supplement Request with the Department. Individuals who reside in those residential care facilities with approved Optional Supplement Requests must also qualify as aged, blind or disabled under the definitions of Public Law 92-603, U.S. Code, or who would qualify except for income limitations. For the period of the current fiscal year, the Department will, based on availability of funds, supplement the income of the above defined group up to a maximum of \$675.00 per/month and the residential care facilities are authorized to charge a fee of \$650.00 per/month for the defined group. The Department will allow each individual in this defined group a \$25.00 per/month personal needs allowance through December 31, 1991. Effective January 1, 1992, the personal needs allowance shall be increased to \$32.50 per month, to be funded by Federal SSI cost of living funds. The Department shall establish the maximum number of Optional Supplement Requests that can be funded from the funds appropriated herein. Each residential care facility must submit to the Department prior to July 1, each year the number of Optional Supplement Requests for the above defined group to be served during the next twelve months. (Emphasis added).

The proviso states in mandatory terms that the "Department will supplement the income of individuals who reside in those licensed residential care facilities that have an approved Optional Supplement Request with the Department." The proviso also states that the "Department will based on availability of funds, supplement the income of the above defined group up to a maximum of \$675.00...". The proviso further states that the "Department shall establish the maximum number of Optional Supplement Requests that can be funded...". The provision, therefore, appears to establish in mandatory rather than precatory terms, a reimbursement schedule for individuals in licensed facilities, a maximum funding amount for each individual, and a maximum number of Optional Supplemental Requests which can be funded. The use of the terms "will" and

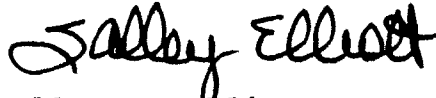
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"shall" require that the action be taken as opposed to the term "may" which connotes that the action is discretionary. Robertson v. State, 276 S.C. 356, 278 S.E.2d 770 (1981). When the terms of a particular statute are clear and unambiguous, the literal meaning should be applied. Duke Power Co. v. S. C. Tax Com'n., 292 S.C. 64, 354 S.E.2d 902 (1987).

While the terms of the proviso appear clear, you may need to receive guidance from federal authorities as to potential impact of the proviso on Medicaid status or possible conflict with applicable federal rules, regulations, statutory provisions or agreements between the federal government and the State. 2/

With kind regards, I am

Sincerely yours,



Salley W. Elliott
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

2/ It is our understanding that the State Health and Human Services Finance Commission has indicated in a July 9, 1991 letter that the program may be limited as prescribed by the proviso so long as methods required in applicable federal regulations are met.