

1980 WL 121164 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 11, 1980

**\*1 Re: Requested Attorney General's Opinion**

Mr. William V. Bradley  
State Ombudsman  
Office of the Governor  
Office of Executive Policy and Programs  
Edgar A. Brown Building  
1205 Pendleton Street  
Columbia, South Carolina 29201

Dear Mr. Bradley:

You have recently asked the opinion of this Office on a question concerning DSS's regulation of residential care facilities.

You say that you have had complaints from residents of residential care facilities about the handling of their funds. You say that DSS will not investigate these complaints unless the residents receive 'optional supplements'—monthly payments—from DSS. Your question is whether DSS must investigate complaints of mishandled funds regardless of whether the residents receive monthly payments from DSS.

'Residential care facilities' are essentially institutions that house infirm or senile adults, except for those institutions licensed by the Department of Mental Health or the Department of Mental Retardation. Residential care facilities are described in Act 648, 1976 Acts (§§ [43-28-10](#) through [43-28-60](#), [Code of Laws of South Carolina](#), 1976, as amended). They are required to be licensed and inspected by DSS. Sections 43-28-20, 43-28-30. DSS promulgated comprehensive rules on the standards these institutions must meet. Rules 114-5-30, 114-5-31; 1976 [Code](#), Vol. 26, 1979 Cum. Supp., pp. 750-778.

The facilities must furnish itemized statements for all charges to the residents or persons paying the bills. Section 43-28-50. In addition, the residents' personal funds, if handled by the facilities, are subject to accountings by the residents, their families, guardians, or DSS:

At the resident's request, an operator may handle the personal allowance for a resident, provided, an accurate accounting of monies received, disbursed, and the balance on hand is available upon request by the resident, his responsible relatives, or guardian, or by an authorized representative of DSS.

Rule 114-5-30(T)(4)(d), [Code](#), Vol. 26, 1979 Cum. Supp., p. 766.

DSS is, of course, charged with the responsibility of enforcing Act 648 and its own regulations. Section 43-28-30; Rules 114-5-30(JJ), 114-5-30(A). Nothing in the Act or the regulations treat residents receiving optional supplements differently from those not receiving such supplements. And specifically, the sections on finances do not differentiate between the two types of residents. See § 43-28-50; Rule 114-5-30(T)(4)-(5).

Therefore it is the opinion of this Office that DSS is responsible for investigating complaints of mishandled funds regardless of whether the residents receive monthly payments. The statute and regulations do say that the residents or their representatives

may have accountings for funds (see § 43-28-50 and Rule 114-5-30(T)(4)-(5)), so this opinion does assume that the residents or representatives have asked for such accountings and are dissatisfied with them.

Sincerely,

\*2 Eugene W. Yates, III  
Assistant Attorney General

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