S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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April 25, 2000

Opinion No. 00-076

Group Homes for the Mentally Retarded

QUESTION

May a group home for the mentally retarded be compelled to release the name of the group home, the purpose of the group home, the number of residents of the group home, the restrictions or limitations imposed by the group home on its residents, the criminal offenses of which such residents are charged, the criminal offenses of which such residents are convicted, the names of all residents of the group home, notice when residents permanently leave the group home for any reason, and any other information relevant or pertinent to persons living nearby the group home?

OPINION

No. Under current state law, a group home for the mentally retarded may not be compelled to release the information you have asked about and is prohibited from releasing information which directly or indirectly identifies a patient or resident or former patient or resident, except under limited circumstances.

ANALYSIS

You have asked whether group homes for the mentally retarded may be compelled to release certain information concerning the group home and the residents of the group home. Your request does not specify the circumstances under which such information would be requested. But you have expressed concern about the impact that group homes for the mentally retarded have upon residential neighborhoods in which they locate and you have specifically asked about information relevant or pertinent to persons living nearby to the group home.

Group homes are 'facilities' subject to licensure by the Department of Mental Health and Mental Retardation. Tenn. Code Ann. §§ 33-2-502, 33-2-503. The Department has defined a "mental retardation residential habilitation facility" for licensure purposes as:

> a residential facility which offers mental retardation services of personal care

> including room, board, and supervision or assistance in the exercise of independent living skills and which offers a program of habilitation or training in developing such skills.

Tenn. Comp. R. & Regs. ch. 0940-5-1-.07(7). While such facilities are licensed by the Department of Mental Health and Mental Retardation, we are advised that they are owned or controlled by the organization that provides support services to the persons with mental retardation who reside in the facility.

Like every state and the federal government, Tennessee has legislation allowing citizens to inspect certain public records. The Tennessee Public Records Act provides, in part:

> (a) All state, county and municipal records ... shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

Tenn. Code Ann. § 10-7-503(a).

Tenn. Code Ann. § 10-7-301(6) provides:

> "Public record or records" or "state record or records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

Tenn. Code Ann. § 10-7-301(1) provides:

> "Agency" means any department, division, board, bureau, commission, or other separate unit of government created or established by the constitution, by law or pursuant to law, including the legislative branch and the judicial branch.

Mental retardation residential habilitation facilities or "group homes" are not governmental agencies created or established by statute. Because mental retardation residential habilitation facilities are not governmental agencies, they are not subject to the requirements of Tenn. Code Ann. § 10-7-503 and may not be compelled to release any of the information you have asked about under the Tennessee Public Records Act.

Moreover, Tenn. Code Ann. § 33-3-104(10)(A) relates to the confidentiality of mentally retarded patients and residents' records and states:

> All applications, certificates, records, reports and all legal documents, petitions and

> records made or information received pursuant to this title and directly or indirectly identifying a patient or resident or former patient or resident shall be kept confidential and shall not be disclosed to any person except insofar as:
>
> (i) Any of the following may consent:
>
> (a) The individual identified who is sixteen (16) years of age or over;
> (b) The legal guardian on behalf of the adult individual identified;
> (c) The parent, guardian or custodian of a minor; or
> (d) The executor, administrator or personal representative on behalf of a deceased patient or resident or former patient or resident;
>
> (ii) Disclosure may be necessary to carry out the provisions of this title;
>
> (iii) Disclosure may be necessary to assure service or care to the individual by the least drastic means that are suitable to the individual's liberty and interests; or
>
> (iv) A court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to public interest or to the detriment of either party to the proceedings.

Thus, under current state law, a group home is prohibited from releasing information which directly or indirectly identifies a patient or resident or former patient or resident, except under the limited circumstances outlined in subsections (i) through (iv). Tenn. Code Ann. § 33-3-104(10)(A).[1]

Your request did not include any proposed legislation which would compel group homes to release certain information concerning the group home and the residents of the group home. Legislation which would require a group home to release the name of the group home, purpose of the group home, the number of residents of the group home, the restrictions or limitations imposed by the group home on its residents, the criminal offenses of which such residents are charged, the criminal offenses of which such residents are convicted and notice when residents permanently leave the group home would not conflict with current state law. But any proposed legislation would need to be analyzed under constitutional standards including whether the state has a permissible purpose or interest in requiring release of such information. Moreover, such

[1] This opinion does not address release of information as to the current medical condition of a patient or resident to any members of the family of a patient or resident or to a patient's or resident's relative or friends under Tenn. Code Ann. § 33-3-104(10)(B) nor does this opinion address release of information to law enforcement agencies where offenses appear to have been committed on the premises of a group home under Tenn. Code Ann. § 33-3-104(10)(C).

legislation would need to be analyzed under existing federal law pertaining to mentally retarded individuals.

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