S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
P.O. Box 20207
NASHVILLE, TENNESSEE 37202

May 22, 2009

Opinion No. 09-98

Number of Licensed Beds in ICF/MR Facilities

QUESTIONS

Tenn. Code Ann. § 71-5-105(b) was amended by Public Chapter 761 of the Acts of 2006 ("the Act"). The amendment changed the limitation upon the maximum number of licensed beds in private intermediate care facilities for persons with mental retardation. The maximum number of such beds was changed from 668 beds to 828 beds over four (4) years in 40-bed increments.

1. If fewer than 40 beds were approved in 2006-2007, or in 2007-2008, do the remaining beds carry over into future fiscal years as available for licensure?

2. Since the Act provides for four (4) years of a 40 bed increase in each year, what is the effect of the statutory language stating that the first forty (40) beds are available beginning on July 1, 2006 "resulting in a maximum of . . . 828 beds by July 1, 2009," when this period is three fiscal years rather than four?

3. Should the Act be interpreted as providing for an increase of 40 in the maximum number of beds on July 1, 2006, an additional increase of 40 beds on July 1, 2007, another 40-bed increase on July 1, 2008, and a final 40-bed increase on July 1, 2009, thereby reaching the statutory maximum of 828?

OPINIONS

1. Yes.

2-3. The Act sets out the number of beds to be added each year, 40, and the number of years in which the beds should be added, four. It also sets out the date on which the first increase should be made, July 1, 2006, and the date on which the last increase should be made, July 1, 2009. These dates incorporate four, not three, fiscal years. The first 40-bed increase occurs on the first day of the first fiscal year, July 1, 2006. The second increase occurs on July 1, 2007; the third increase occurs on July 1, 2008; and the fourth increase occurs on July 1, 2009. The total number of beds to be added is 160. The beginning number of beds is 668 and the ending number is 828.

ANALYSIS

In 2006, the Legislature enacted Public Chapter 761, an act that amended Titles 71 and 33 with respect to intermediate care facilities for persons with mental retardation. Prior to the amendment, Tenn. Code Ann. § 71-5-105(b) provided:

> The total number of beds in private for-profit and private not-for-profit intermediate care facilities for persons with mental retardation (ICF/MR) facilities shall not exceed a total maximum number of six hundred sixty-eight (668). In compliance with the certificate of need process, private for-profit and private not-for-profit ICF/MR beds may be transferred from one location to another but the total number of such beds shall not exceed six hundred sixty-eight (668).

The 2006 act designated the above language as subparagraph (b)(1) and added two (2) new subparagraphs. These new subparagraphs provide, in pertinent part:

> (b)(2) Beginning July 1, 2006, the total number of beds in ICF/MR facilities shall increase by forty (40) beds per year for the next four (4) years resulting in a maximum of eight hundred twenty-eight (828) beds by July 1, 2009. Only providers that have been providing services to persons with developmental disabilities under contract with the state for at least five (5) years shall be eligible to apply for these new beds. These new beds shall be filled by persons from the developmental centers. Providers may refuse persons based on needs compatibility with the total mix of persons in the facility.
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> (b)(3) The division of mental retardation services (DMRS) is to appoint a nine-person taskforce to review oversight, utilization, and future need for ICF/MR services and make recommendations to the general assembly and governor by June 30, 2007. . .

1. Your first question inquires whether – in the event that fewer than 40 beds were approved in 2006-2007, or in 2007-2008 – the remainder would carry over into future fiscal years as available for licensure. Answering this question requires construction of the statutory language. The most basic rule of statutory construction is to ascertain and give effect to the intention and purpose of the Legislature. *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977). The intention of the Legislature is to be ascertained from the words it used, not the words it left out or chose not to use. *Loftin v. Langsdon*, 813 S.W.2d 475, 480 (Tenn. App. 1991). A statute's meaning is to be determined, not from special words in a single sentence or section, but from the act taken as a whole, and viewing the legislation in the light of its general purpose. *Id.*

at 478. When the language of a statute is plain, clear, and unambiguous, the words of the statute as written will be given full effect without resort to rules of construction in order to reach the legislative intent. *Coke v. Coke*, 560 S.W.2d 631, 633 (Tenn. App. 1977).

Sub-paragraph (b)(1) of Tenn. Code Ann. § 71-5-105 states that the maximum number of ICF/MR beds is 668. Subparagraph (b)(2), which was added later, increases the number of ICF/MR beds by 40 per year for a period of four years beginning on July 1, 2006. The beginning maximum number of beds, 668, plus the 160 beds added by sub-paragraph (b)(2) results in an ending maximum number of beds of 828. Sub-paragraph (b)(2) clearly provides that on July 1, 2009, the maximum number of beds will be 828.

The statute does not instruct that the maximum number of beds shall be reduced by the number of beds not licensed in a particular year. Had the Legislature intended for the additional beds to be lost if not licensed, we believe that it would have said so and that it would have qualified the reference to the final number of beds, 828, to acknowledge that this number might be lower if all additional beds were not licensed.

As we read the plain language of the statute, 40 beds per year are added for four years. Regardless of whether all such beds are licensed in a particular year, 828 beds will be available for licensure on and after July 1, 2009.

2 - 3. Your next two questions concern the effect and interpretation of the statutory language stating that the first 40 beds are available beginning on July 1, 2006 "resulting in a maximum of . . . 828 beds by July 1, 2009." You question whether this language affects the Legislature's clearly-stated intention to provide for four years of a 40 bed increase in each year.

The plain language of the statute sets out the number of beds to be added each year, 40, and the number of years in which the beds should be added, 4. It also sets out the date on which the first increase should be made, July 1, 2006, and the date on which the last increase should be made, July 1, 2009. These dates incorporate four, not three, fiscal years. The first 40-bed increase occurs on the first day of the first fiscal year, July 1, 2006. The second increase occurs on July 1, 2007; the third increase occurs on July 1, 2008; and the fourth increase occurs on July 1, 2009. The total number of beds to be added is 160. The beginning number of beds is 668 and the ending number is 828.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

SUE A. SHELDON
Senior Counsel

Requested by:
Honorable David Hawk
State Representative
219 War Memorial Building
Nashville, Tennessee 37243-0105