

FLSA-198

February 1, 1974 (est.)

This is in reply to your letters of November 12, 1973, and January 3, 1974, regarding the application of the Fair Labor Standards Act to a Community Health Center operated by one of your clients.

You state the Center provides a wide range of programs, including services to the mentally ill, alcoholics, drug abusers, disturbed children, etc. The Center operates from a central complex (where persons with mental problems spend a day or halfday) and leases a number of buildings around the city for different parts of its programs. These establishments are as follows:

1. A Drug Abuse Detoxification Unit located two blocks from the Main Center.
2. A Therapeutic Community which provides residential care for patients for approximately 6 months and which is located in the same building as the Drug Abuse Detoxification Unit.
3. Three Halfway Houses where patients not hospitalized in the medical sense are treated and provided with residential care.

In addition, the Center has a cooperative agreement with three hospitals for the use of their psychiatric units if Center patients need to be hospitalized and treated. Certain Center personnel work with the patients in the hospitals but the hospital assumes responsibility for the patients. Also, one hospital operates a 20-bed alcohol detoxification unit which is partially funded through a federal grant obtained by the Center and predicated upon an affiliate agreement between the Center and the hospital. Several Center staff members work on that Unit and provide counseling and other treatment services to the patients while they are in the hospital.

The Community Mental Health Center has approximately 150 employees, consisting of registered nurses, licensed practical nurses, psychiatrists, psychologists, doctors, social workers and 25 clerical and administrative employees, maids and janitorial staff, cooks and home economists. In the last fiscal year, the Center charged patients \$550,701.36 for services rendered, discounted \$379,233.04 of this, leaving \$161,526.32 to be billed. Of this latter amount, 55% was collected. In addition, the Center receives approximately \$2,000,000 in federal, state and local government grants annually.

Five percent of the total of 4,973 patients treated in the last fiscal year remained at the Center (in either the drug abuse detoxification program, the drug therapeutic community or in the halfway houses) overnight or longer.

You state the Center is not licensed as a hospital since it does not meet the requirements

prescribed for accreditation of hospitals by the Joint Commission on Accreditation of Hospitals.

Based on the information contained in your letters and several telephone conversations with Mrs. Aubry of my staff, we would agree that the Community Health Center is not a hospital within the meaning of section 3(s)(4) of the Fair Labor Standards Act.

We are of the opinion, however, that all employees employed in activities in connection with the operation of the three Halfway Houses and the Therapeutic Community are employed in an enterprise operating institutions which are primarily engaged in the care of the sick, the mentally ill or defective, who reside on the premises of such an institution, as contemplated in sections 3(r)(1) and 3(s)(4) of the Act. Thus, unless specifically exempt, such employees are subject to the minimum wage and overtime pay provisions of the Act. You will note there is no specific dollar volume of business involved in determining enterprise coverage for a "residential care" enterprise. In addition, the exemption provided for employees of retail and service establishments under section 13(a)(2) of the Act specifically excludes employees of residential care enterprises, among others, even though such enterprises are considered as having a "retail concept" for other purposes, such as the exemption from the overtime requirements of the Act in section 13(b)(18) for food service employees of retail establishments. This and other exemptions are discussed on pages 7 and 8 of the enclosed WH Publication No. 1328 (Rev.) on "Residential Care Enterprises Under the Fair Labor Standards Act." Pertinent too is the information on page 3 of the publication concerning facilities furnished to employees which may be included in computing wages.

It should also be pointed out that those employees in the Central Complex and the Drug Abuse Detoxification Unit who, as a regular and recurring part of their duties, use the interstate mails, telephone, or other instrumentalities of commerce in obtaining or communicating information, receive written reports or goods from across State lines, or engage in the preparation of letters or reports that will be sent out of the state, will be considered to be covered under the Act on an "individual" coverage basis, and must also be paid at least the statutory minimum wage of \$1.60 an hour and overtime compensation at a rate of one and one-half times their regular rates of pay for all hours worked over 40 in a workweek, unless specifically exempt. This is explained in the enclosed WH Publication No. 1358 which provides general information on coverage of the Fair Labor Standards Act.

If you have any further question with regard to this matter, you may find it more convenient to get in touch with our Area Office ***. Officials there are in a better position to ascertain the necessary facts and they will be glad to be of all possible assistance to you.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division

Enclosures