

FLSA-143

May 20, 1975

This is in further reply to your letter of November 13, 1974, concerning the application of the Fair Labor Standards Act to certain residential care homes for juveniles. We regret the delay in responding to your inquiry.

Section 3(s)(4) of the Act states, in effect, that an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution is covered by the Act, regardless of whether or not such institution is public or private or operated for profit or not for profit. In the publication from which you quote, the statutory terms "primary" and "the mentally ill or defective" are expressed in laymen terms in their ordinary sense. We have traditionally interpreted primary where it appears in the Act to mean 50% or more, and we have taken the mentally ill or defective to include emotionally disturbed or mentally retarded persons whose problems give rise to the need for some kind of treatment, guidance and protection in a therapeutic environment.

Shortly after the enactment of the 1966 amendments to the Act, we defined an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective residing on the premises as an institution (other than a hospital) primarily engaged in (i.e., more than 50% of the income is attributable to) providing domiciliary care to individuals who reside on the premises and who, if suffering from physical or mental infirmity or sickness of any kind, will require only general treatment of a less critical nature than that provided by a hospital.

The 50% referral test to which you refer was decided upon after consultation with various authorities in the mental health field. An institution for the residential care of emotionally disturbed persons would come within the coverage of section 3(s)(4) of the Act if more than 50% of its residents have been admitted by a qualified physician, psychiatrist, or psychologist. For purposes of the 50% test, the term "admitted" includes evaluations of mental or emotional disturbance by qualified physicians either subsequent to admission to the institution or preceding admission and being the cause for referral. In that light and on the basis of the information you have furnished, it appears that the homes operated by your client would fall within the coverage of section 3(s)(4) of the Act.

We agree with you that the two parts of section 13(b)(24) of the amended Act are conjunctive and should be connected by "and" instead of "or". With respect to your last question, we have not defined a nonprofit organization within the meaning of the Act as it is immaterial in determining coverage under section 3(s)(4) of the Act.

Enclosed is a Handy Reference Guide which briefly outlines the major provisions of the amended Act. Should you need additional information, we have people in the local office of the Wage and Hour Division at 110 South 4th Street, Room 396, Federal Building,

Minneapolis, Minnesota 55401, telephone (612) 725-2594, who will be glad to be of assistance.

Sincerely,

Herbert J. Cohen
Assistant Administrator
Office of Fair Labor Standards