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OPINION	:	No. 80-514
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of	:	<u>July 29, 1980</u>
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SUBJECT: INSPECTION OF COMMUNITY CARE RESIDENTIAL FACILITIES—An Area Developmental Disabilities Board does not have authority to inspect community care residential facilities with or without prior notice.

Area Developmental Disabilities Board VII has requested an opinion on a question phrased as follows:

Does an Area Developmental Disabilities Board have authority to inspect community care residential facilities without prior notice?

CONCLUSION

An Area Developmental Disabilities Board does not have authority to inspect community care residential facilities with or without prior notice.

ANALYSIS

The Legislature through the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, §§ 4500–4846)¹ has established an elaborate and comprehensive system to provide services to developmentally disabled persons² to enable them to lead “more independent, productive, and normal lives.” Due to the vast size, complexity and diversity of the state, the Legislature has established regional “area boards,” giving them “monitoring responsibilities.” (§§ 4501, 4750.) The area boards do not themselves provide directly for the delivery of services to the developmentally disabled. The area boards are authorized, however, to protect and advocate the legal, civil and service rights of the developmentally disabled (§§ 4570, 4590), form citizens assistance organizations (§ 4592), review policies and practices of public agencies that serve the developmentally disabled (§ 4593), and assist the state council in the preparation of the state plan (§ 4597). When performing these monitoring functions, the area boards are mandated not to duplicate the functions assigned to other agencies that are routinely responsible for monitoring, regulating, or licensing programs for developmentally disabled persons.” (§ 4594.)

Pursuant to sections 4670–4677, community care residential facilities for the developmentally disabled have been established.³ It is the monitoring of these types of facilities by the area boards that is the heart of the issue presented here. We are asked specifically whether the area boards have the right to enter these facilities for monitoring purposes without giving prior notice to the owner or operator.

¹ All unidentified statutory references are to the Welfare and Institutions Code.

² Section 4512, subdivision (a) provides:

(a) ‘Developmental disability’ means a disability which originates before an individual attains age 18, continues, or can be expected to continue indefinitely, and constitutes a substantial handicap for such individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

³ See also Health and Safety Code sections 1500–1567.9 providing for community care facilities generally.

All community care facilities⁴ must be licensed by the State Department of Social Services. (Health & Saf. Code §§ 1508, 1509.) Said department is specifically authorized to inspect community care residential facilities under the provisions of Health and Safety Code section 1533:

⁴ Community Care Facility” is defined as follows:

“Community Care Facility” means any facility, place or building providing nonmedical care and supervision, as defined in Section 80051, to children, adults, or children and adults, and may include but is not limited to facilities for the developmentally disabled, physically handicapped, mentally disordered, or incompetent persons, and includes any residential facility, day facility and homefinding agency.” (Tit. 22, Cal. Admin. Code, § 80003; see also Health & Saf. Code, § 1502.)

Residential facility is defined as follows:

(a) ‘Residential Facility’ means any family home, group home, social rehabilitation facility or similar facility determined by the Director, for 24-hour non-medical care to persons in need of personal services, protection, supervision, assistance, guidance or training essential for sustaining the activities of daily living or for the protection of the individual. A residential facility includes:

“(1) Small Family Home—Children. ‘Small Family Home—Children’ means the family residence of the licensee in which care and supervision are provided for not more than six (6) children, exclusive of members of the licensee’s family.

“(2) Small Family Home—Adults. ‘Small Family Home—Adults’ means the family residence of the licensee in which care and supervision are provided for not more than six (6) adults, exclusive of members of the licensee’s family.

“(3) Large Family Home—Children. ‘Large Family Home—Children’ means the family residence of the licensee which is licensed to provide care and supervision for seven (7) through twelve (12) children, exclusive of members of the licensee’s family.

“(4) Large Family Home—Adults. ‘Large Family Home—Adults’ means the family residence of the licensee which is licensed to provide care and supervision for seven (7) through twelve (12) children, exclusive of members of the licensee’s family.

“(5) Group Home—Children. ‘Group Home—Children’ means a residential home of any capacity that provides services in a group setting to children who need care and supervision. “(6) Group Home—Adults. ‘Group Home—Adults’ means a residential home of any capacity that provides services in a group setting to adults who need or desire care and supervision.

“(7) Social Rehabilitation Facility ‘Social Rehabilitation Facility’ means a facility or any capacity that provides services in a group setting to person’ who currently or potentially are capable of meeting their life support needs independently, but who temporarily need assistance, guidance or counseling.” (Tit. 22, Cal. Admin. Code, § 80005; see also Health & Sal. Code, § 15112.)

“Any duly authorized officer, employee, or agent of the state department may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services at any time, with or without advance notice, to secure compliance with or to prevent a violation of, any provision of this chapter.” (Emphasis added; see also tit. 22, Cal. Admin. Code, § 80351.)

When we read this section in conjunction with section 4594, which provides: that the area boards not duplicate the functions of other agencies, the inescapable conclusion is that the area boards do not have inspection authority. We can find nothing in the legislative scheme of the area boards giving them authority to inspect. Accordingly, we conclude that area boards do not have authority to inspect community care residential facilities with or without prior notice.⁵

⁵ In view of our conclusion, we do not discuss the methods of conducting inspections. For a discussion of some aspects of such inspections, see 63 ops. Cal. Atty. Gen. 169 (1980).