

Licensing of Private Mental Hospitals

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PRIVATE mental hospitals can be regulated through purchase of services, criminal law prosecution, professional accreditation, voluntary standard setting, State leadership, and legislative investigation. This report focuses on regulation through licensing.

Governmental regulation of private mental hospitals protects the public in a matter which cannot be left solely to private judgment. Licensing may ensure that certain protections and minimum standards are maintained in treating the mentally ill. The role of regulatory legislation in protecting the interests of individuals is illustrated in the following statement (1).

Regulatory legislation usually comes into being when a social problem has become too complicated and too wide-spread to be dealt with by individuals, unassisted by their governments. The operation of a hospital, for instance, involves many highly technical and specialized procedures. It would be unreasonable to assume that each of the hundreds of thousands of users of hospitals should be competent to evaluate for himself the standards under which the hospital renders service and decide whether they are safe.

The value of licensing in raising standards of hospital care has also been stressed. In recognition of the importance of licensing in improving hospital practices and standards of service, the Council of State Governments stated that an important purpose of hospital licensing "is the improvement of hospital practices by educa-

tional methods so that such practices eventually exceed the minimum requirements of the basic law and its original standards" (2). Thus, licensing of private mental hospitals may be viewed as a process of developing, enforcing, and upgrading standards of care and treatment for the mentally ill.

A systematic inquiry into the laws for licensing private mental hospitals is particularly timely because of the increasing importance of private health and welfare services. With the advent of Medicare and the extension of coverage for mental illness by private insurance companies, a further increase in the requests for private mental hospital services may be anticipated.

Characterization of Licensing Laws

In June 1965 the appropriate representative of each State, the District of Columbia, and Puerto Rico was asked by correspondence to indicate if the law in his State provided for licensing of private mental hospitals. Representatives from only four States, Alaska, Delaware, Utah, and Wisconsin, reported no provision for such licensing.

Categories. Legal provision for licensing of private mental hospitals differed greatly among the States. Some States made separate provision for licensing private mental hospitals. Others had a general hospital licensing law which included reference to specialty hospitals, such as mental or tuberculosis hospitals. Still others had a licensing law for general medical hospitals with no specific reference to mental hospitals.

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It was evident that the mandate for licensing private mental hospitals under similar laws was interpreted differently in various States. In a number of States without a separate licensing law covering private hospitals, the general licensing law for medical hospitals was interpreted as requiring the licensure of private mental hospitals. Two of the four States reporting no licensing law for private mental hospitals, Alaska and Utah, have a general hospital licensing law. The representatives of Alaska and Utah, however, indicated that provisions for licensure of general hospitals did not cover private mental hospitals.

Those laws with separate provision for the licensing of private mental hospitals made reference to facilities interpreted as including hospitals and specified that the establishment to be licensed was for the care and treatment of the mentally ill. The District of Columbia, California, Connecticut, Hawaii, Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Vermont, Virginia, Washington, and West Virginia had such a law. The following abstract is from the California law, an example of a separate law for licensure of private mental hospitals (3).

No person, association, or corporation, shall establish or keep for compensation or hire, an establishment for the care, custody, or treatment of the insane, alleged insane, mentally ill, or other person referred to in this division without first having obtained a license therefore from the department of mental hygiene.

Those laws requiring the licensing of general hospitals and including reference to specialty hospitals, such as mental hospitals, generally have definitions of hospitals specified in the law. An example is the following excerpt from the Arkansas statute (4).

Hospital includes public health centers and general, tuberculosis, mental, chronic disease hospitals or related facility, nurses home or training facility, or central service facility operated in connection with a hospital.

Puerto Rico, Arkansas, Idaho, Maryland, Mississippi, Montana, and Wyoming had such laws.

Laws requiring licensing of general hospitals with no reference to mental hospitals emphasized facilities for the treatment of physical conditions. Laws so classified were those of Ala-

bama, Alaska, Arizona, Colorado, Florida, Georgia, Iowa, Kentucky, Louisiana, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, and Utah. The following definition of a hospital is illustrative of those cited in such laws (5).

Hospital means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than twenty-four hours in any one week or three or more nonrelated individuals suffering from illness, disease, injury, deformity or other abnormal physical condition.

Provisions for the regulation of hospitals in Wisconsin were not classifiable into the above categories. Although no licensing requirement was specified, chapter 58 of Wisconsin's statutes provides for the inspection of and reporting by private institutions for the insane and feebleminded.

Delaware was the only State noted as having no provision for hospital licensing. Delaware, however, had a licensing law for nursing homes caring for aged, chronically ill, or convalescent persons (6).

Jurisdictional Scope

Diversity exists in the extent to which States have elected to regulate private mental hospitals by separate licensing law. Representatives of slightly more than half of the 50 States reported that private mental hospitals were under the jurisdiction of a general hospital licensing law. Similarly, licensing agency representatives from California, Illinois, Ohio, New Jersey, and Texas, who were interviewed in person, were divided in their opinions as to whether private mental hospitals should be licensed according to a statute separate from the licensing law for general hospitals.

In the identification of significant health and welfare problems, the public has tended to support more readily a separate and distinguishable program which can be given wide and extensive discussion. This tendency perhaps accounts, in part, for the development of provisions for licensing private mental hospitals independently from general medical hospitals.

Should private mental hospitals be governed by a statute separate from the licensing law

for general medical hospitals? The answer is not simply that one approach is superior to the other. It should be recognized that the approach to the licensing of private mental hospitals by separate statute or by a comprehensive hospital licensing law may have significant administrative and operational implications. For example, emphasis is now being placed on acceptance by the community general hospital of mental patients for short-term hospitalization. If private mental hospitals are licensed by separate statute, licensing of the general hospital and of the psychiatric unit may be carried out by two separate State agencies. In such a situation, the administrative and operational coordination of the licensing programs for medical and mental hospital services would assume increased importance.

Licensing private mental hospitals under a law formulated for regulating general hospitals may present operational problems. It has been noted, for example, that licensing laws for general medical hospitals are usually administered by departments of health. If the regulation of private mental hospitals is carried out under a general hospital licensing law which is administered by a department of health, medical care may possibly be unduly emphasized at the expense of standards of psychiatric treatment.

It is evident that the licensing of private mental hospitals is related to the regulation of the broad spectrum of health services, including tuberculosis, maternity, convalescent, and general medical hospital services. When such facilities are viewed as a logical continuum of health services, their coordination should be emphasized. The coordination of such hospital facilities would not necessarily rest upon their inclusion in a comprehensive hospital licensing law. Such an approach, however, might be one means of coordinating formulation and enforcement of standards of care and operation among related hospital facilities.

What facilities will be covered when the decision has been made to regulate private mental hospitals by a separate licensing law? Should psychiatric units in a general hospital and the facilities operated by religious groups be excluded from the jurisdiction of the law?

If the purpose of hospital licensing is to set

and enforce standards of hospital operation, it seems illogical to exempt an institution from the licensing requirements because it is operated by a religious group. Such exceptions may result in unequal standards of care and treatment, denying one segment of the public the benefits of the licensing requirement.

Regarding psychiatric units in general hospitals, the issue may relate to which of two licensing authorities will have jurisdiction. On one hand, the program emphasis of the mental health department might justify its designation as the licensing authority for psychiatric units in general hospitals. On the other hand, it might be concluded that the department of health would be particularly suited to supervise health and sanitation aspects of hospital operation. Thus, a dual responsibility for hospital licensing of both the health and mental health departments might be the solution. Because of the divergence among States in patterns of administrative organization of health services, no one organizational pattern can be identified as preferable. However, sound public administration principles suggest the need for related health programs to be carefully coordinated.

Are private mental hospitals which are regulated by licensing requirements obliged to maintain higher standards of care and treatment than public hospitals? It is generally accepted that hospitals operated under public auspices are exempt from the licensing requirement. Certain provisions, however, could be included in the law which would serve to improve the care provided in hospitals under public auspices. It would be possible, for example, for the law to authorize the licensing agency to provide visitation, consultation, and reporting services to government-operated mental hospitals. This service, however, would not be licensing.

Administering Licensing Authority

Regulation of private mental hospitals might be considered within the function and special competence of a department of mental health. Therefore, if administrative location of the licensing authority for regulating private mental hospitals was determined on the basis of related function, the department of mental health might be the preferred department to house such a program. Similarly, for those States with

a general medical hospital licensing law but no separate provision for the licensing of private mental hospitals, it would seem logical for the hospital licensing authority to be located administratively in the State department of health.

Of the 20 States with separate provision for licensing private mental hospitals, 14 located the licensing agency in the department of mental health or mental hygiene. Of the remaining six States, only two located the licensing authority in the department of health.

Of those 29 States classified as not having made separate provision for licensing private mental hospitals, 22 located the licensing authority in the board or department of health.

In recent actions by two States, the department of health was judged the appropriate department to coordinate all hospital licensing. The 1965 Illinois Legislature transferred the authority for the licensing of private mental hospitals from the department of mental hygiene to the department of health. In a report of the Governor of New Jersey to the 1966 State Legislature, it was proposed that the licensing function of the department of institutions be transferred to the department of health. In the light of these developments, the trend in State governments may be toward focusing increased responsibility for the licensing of mental hospitals and related facilities on departments of health.

Summary and Conclusions

Analysis of the hospital licensing laws of all the States, the District of Columbia, and Puerto Rico revealed marked variance. The laws of 20 States and the District of Columbia provided for separate licensing of private mental hospitals. The laws of six States and Puerto Rico were primarily directed to the regulation of general medical hospitals, but also included mental hospitals. A general hospital licensing law, with no reference to mental hospitals, existed in 22 States. Only one State had no provision for licensing of hospitals, and the laws of another were not classifiable into any of these categories.

The observance of required standards, regardless of the sponsorship of the institution, would foster the protection of those requiring care and treatment in a private mental hospital. Therefore, all private facilities providing the same type of service should comply with established standards.

Mental hospital facilities operated by State, county, or municipal governments are exempted from the licensing requirement. The licensing law could specify, however, that the licensing agency provide visitation, consultation, and reporting services to mental hospitals operated under public auspices.

The observation that the majority of States with a separate licensing law for private mental hospitals located the licensing authority in the department of mental health or hygiene seems to suggest that mental health personnel were considered to be the most appropriate persons to develop and carry out what was viewed as a specialized licensing program. However, recent action by two States, transferring the administrative location of the licensing authority from the mental health department to the department of health, may indicate a trend to organize various licensing programs into a centralized department. With the increasing need for the regulation of various health care facilities, such as general hospitals, nursing homes, and mental hospitals, theoretically there would appear to be merit in unifying related licensing programs in one administrative department.

REFERENCES

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- (4) Division of Hospitals and Nursing Homes Act. Ark. Act 414, 1961.
- (5) Miss. Code. Tit. 25, ch. 7, 1942; Ann. Laws. Ch. 398, secs. 1-17 (1948).
- (6) Del. Code Ann., 1953. Tit. 16, ch. 11, secs. 1101-1110.