

OFFICIAL OPINION NO. 75-186, Applicability of SDCL 34-12 and SDCL 34-7 A to alcohol treatment facilities

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

November 3, 1975

Miss Judith K. Call, Secretary
Department of Health
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 75-186

Applicability of SDCL 34-12 and SDCL 34-7 A to alcohol treatment facilities

Dear Miss Call:

You have requested an official opinion on the following interrelated questions:

1. Do the requirements of SDCL 34-12 pertaining to the mandatory licensing of "hospitals and related institutions" apply to alcohol treatment facilities?
2. Do the requirements of SDCL 34-7A pertaining to the necessity of receiving a certificate of need before constructing or modifying a health care facility apply to alcohol treatment facilities?

You have not expressly defined an alcohol treatment facility in your request for an official opinion. However, it can be assumed that the term would encompass any public or private institution that provides services and treatment for alcoholics and intoxicated persons pursuant to South Dakota's Uniform Alcoholism and Intoxication Act (SDCL 34-20A). The services rendered by such an institution would necessarily include providing board and lodging and attending to the basic needs of inebriates; securing medical assistance for them when necessary; and providing rehabilitation counseling in various forms.

It appears to me that alcohol treatment facilities are subject to the licensing requirements of SDCL 34-12. SDCL 34-12-2 provides in pertinent part:

No person, partnership, association or corporation shall establish, conduct or maintain in the State of South Dakota, any hospital, ... or related institutions for the hospitalization or care, or both, of human beings without first obtaining a license therefor from the South Dakota department of health in the manner hereinafter provided.

The term "hospital or related institutions" is defined in SDCL 34-12-1 as:

Any institution, sanitarium, nursing home, place, building or agency in which any accommodation is maintained, furnished, or offered for the hospitalization or nursing care of the sick or injured.

By giving such a broad statutory definition to the phrase "hospital or related institutions," it is apparent the Legislature intended that the licensing requirements be extended to a wide variety of institutions. It appears that any facility that provides accommodations and renders aid to incapacitated persons is an institution which must be licensed under the Act.

By its very nature, an alcohol treatment facility provides accommodations and renders aid to inebriates whose physical or mental faculties render such treatment necessary. Thus, it is clear that such a facility is a hospital or related institution within the broad purview of the above quoted statutes and such a facility is subject to the mandatory licensing requirements of SDCL 34-12-2. *

With respect to your second question, SDCL 34-7A-16 provides:

No construction or modification of a health care facility, whether public, nonprofit, or proprietary, shall be commenced unless a certificate of need has been issued therefor in accordance with this chapter.

The term "health care facility" is defined in SDCL 34-7A-2(I) as:

Any hospital ... licensed as such under chapter 34-12 or any other licensed outpatient care facility, extended care facilities or home care facilities.

Based upon the above quoted statutes, it follows as a matter of course that since an alcohol treatment facility must be licensed as a hospital or related facility under SDCL 34-12, it must also comply with the certificate of need requirements of SDCL 34-7 A.

Therefore, it is my opinion that both questions must be answered in the affirmative.

Respectfully submitted,

William Janklow
Attorney General

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* It should be noted that an alcohol treatment facility may also be licensed by the Division of Alcoholism under the Uniform Alcoholism and Intoxication Act. Licensing under this Act would be independent of licensing under SDCL 34-12.