

OPINION NO. 87-080**Syllabus:**

1. An entity that places children in foster homes that are licensed by the Department of Mental Health as residential care facilities under R.C. 5119.22 and applicable rules is not, pursuant to R.C. 5103.02, excluded from the requirement that it be certified by the Department of Human Services as a child care agency under R.C. 5103.03 and applicable rules, where the entity is not itself regulated by the Department of Mental Health.
2. An entity that has been approved by the Department of Youth Services under R.C. Chapter 5139 and applicable rules as a community residential network is, pursuant to R.C. 5103.02, excluded from the requirement that it be certified by the Department of Human Services as a child care agency under R.C. 5103.03 and applicable rules to the extent that its activities come within the approval granted by the Department of Youth Services. Such an entity is, however, not excluded from the requirement that it be certified by the Department of Human Services as a child care agency under R.C. 5103.03 and applicable rules where it undertakes

activities that exceed those for which the Department of Youth Services has granted approval.

3. The fact that one building on the grounds of a children's residential center is certified by the Department of Mental Health as a community mental health facility under R.C. 5119.01(I) and applicable rules to provide day treatment to children does not operate under R.C. 5103.02 to exclude the center from the requirement that it be certified by the Department of Human Services as a children's residential center under R.C. 5103.03 and applicable rules.
4. The fact that a day school located on the grounds of a children's residential center is approved by the Department of Education does not operate under R.C. 5103.02 to exclude the center from the requirement that it be certified by the Department of Human Services as a children's residential center under R.C. 5103.03 and applicable rules. (1983 Op. Att'y Gen. No. 83-065, distinguished.)
5. When an organization consisting of a central body that places children in host homes is certified by the Department of Mental Health under R.C. 5122.51(C) as an approved drug treatment program and the Department of Mental Health states that the certification applies only to the program at the address indicated on the certificate and does not include host homes, the certification operates under R.C. 5103.02 to exclude the organization from the requirement that it be certified by the Department of Human Services under R.C. 5103.03 and applicable rules with respect to its approved drug treatment program. Such an organization is, however, not excluded from the requirement that it be certified by the Department of Human Services under R.C. 5103.03 and applicable rules where it undertakes activities, such as the placing of children in foster homes, that exceed those for which the Department of Mental Health has granted certification.

To: Patricia K. Barry, Director, Department of Human Services, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 27, 1987

You have requested an opinion concerning the authority of the Ohio Department of Human Services to regulate various institutions or associations that receive, care for, or place children. The general authority of the Department in this regard is set forth in R.C. 5103.03, as follows:

The department of human services shall make such rules as are necessary for the adequate and competent management of institutions or associations as defined in section 5103.02 of the Revised Code. Except for those institutions under the control of the department of youth services, places of detention for children established and maintained pursuant to sections 2151.34 to 2151.3415 of the Revised Code, and child

day-care centers subject to Chapter 5104. of the Revised Code, the department of human services shall annually pass upon the fitness of every benevolent or correctional institution, corporation, and association, public or private, that receives, or desires to receive and care for children, or places children in private homes....

When the department of human services is satisfied as to the care given such children, and that the requirements of the statutes and rules covering the management of such institutions, corporations, and associations are being complied with, it shall issue to the institution, corporation, or association a certificate to that effect, which shall continue in force for one year, unless sooner revoked by the department. (Emphasis added.)

The terms "institution" and "association" are defined in R.C. 5103.02, for purposes of R.C. 5103.03-.19, as follows:

"Institution" or "association" includes any incorporated or unincorporated organization, society, association, or agency, public or private, which receives or cares for children for two or more consecutive weeks; any individual who, for hire, gain, or reward, receives or cares for children for two or more consecutive weeks, unless he is related to them by blood or marriage; and any individual not in the regular employ of a court, or of an institution or association certified in accordance with section 5103.03 of the Revised Code, who in any manner becomes a party to the placing of children in foster homes, unless he is related to such children by blood or marriage, or is the appointed guardian of such children; provided, that any organization, society, association, school, agency, child guidance center, or children's clinic licensed, regulated, approved, operated under the direction of, or otherwise certified by the department of education, a local board of education, the department of youth services, the department of mental health, or the department of mental retardation and developmental disabilities, or any individual who provides care for only a single-family group, placed there by their parents or other relative having custody, shall not be considered as being within the purview of these sections. (Emphasis added.)

You have asked whether certain types of entities come within the exemptions in R.C. 5103.02 that are underlined above.

Your first question asks:

Does the Ohio Department of Human Services have jurisdiction to certify an "institution" or "association" as a child care agency for placing children, pursuant to O.A.C. Chapter 5101:2-5, where the Ohio Department of Mental Health licenses the foster homes in which the children are placed and conducts the home studies required by O.A.C. Section 5101:2-5-01(D)(2)?

I have been informed by a member of your staff that the entity in question is a private, nonprofit corporation that places

children in foster homes. I have also been informed that the entity is not licensed by the Department of Mental Health, but that the Department of Mental Health does license the foster homes under R.C. 5119.22 and 9 Ohio Admin. Code 5122:3-5-16 through 5122:3-5-20.

R.C. 5119.22 provides for the licensing of residential care facilities by the Department of Mental Health. It states, in part:

As used in this section:

(A) "Residential care facility" means an institution, residence, or facility that provides either:

(1) For at least one mentally ill individual, accommodations and mental health services under a treatment plan developed by a mental health clinical facility as defined in division (H) of section 5122.01 of the Revised Code;

(2) Accommodations for six or more mentally ill adults....

...[A] facility providing care for a child in the custody of a county department of human services, county children services board, or a private agency certified under section 5103.03 of the Revised Code...[is] not [a] residential care [facility].

The division of mental health facilities and services shall license all residential care facilities. The division shall inspect each facility at least once each calendar year or may contract with a community mental health board to conduct any such inspections. The division shall adopt rules under Chapter 119. of the Revised Code, which shall be published and made available to the public, prescribing minimum standards for the health, safety, and adequacy of treatment of mentally ill persons in residential care facilities and establishing procedures and fees for the issuance and renewal of the licenses of such facilities.

Rules implementing this provision appear in 9 Ohio Admin. Code Chapter 5122:3-5. See also R.C. 5119.05(B). Rules 5122:3-5-16 through 5122:3-5-20, under which the foster homes in question are licensed, apply "to the type of residential care facilities which provide accommodations and mental health services in accordance with an individualized client plan for a maximum of five unrelated residents, any one of whom is referred by a mental health clinical facility or a private practitioner, which facility is...referred to as type B facility." 9 Ohio Admin. Code 5122:3-5-16.

It thus appears that the foster homes are licensed by the Department of Mental Health so that they are, pursuant to R.C. 5103.02, excluded from the requirement that they be certified by the Department of Human Services under R.C. 5103.03, and you have raised no questions concerning regulation of these homes by the Department of Human Services. Your question is whether the agency that places children in these foster homes should be certified by the Department of Human Services as a child care agency under R.C. 5103.03 and applicable rules.

Rules governing the certification of child care agencies by the Department of Human Services appear in 8 Ohio Admin. Code Chapter 5101:2-5 and amendments thereto. [1986-1987 Monthly

Record, vol. I] Ohio Admin. Code 5101:2-3-01(B) at 420 defines "agency," for purposes of Chapters 5101:2-3 and 5101:2-5 of the Ohio Administrative Code, to mean "an organization which places children in homes apart from their parents or legal guardians," excluding juvenile courts. An entity that places children in foster homes is clearly an agency that must be certified under Chapter 5101:2-5 of the Ohio Administrative Code, unless it is entitled to be excluded from the certification requirement. R.C. 5103.03 extends the certification requirement to every institution or association "that receives, or desires to receive and care for children, or places children in private homes." The agency that you have described is such an institution or association. The fact that the agency does not itself care for children but, instead, places them in residential facilities does not exclude the agency from the certification requirement of R.C. 5103.03. See generally 1982 Op. Att'y Gen. No. 82-065. R.C. 5103.02 excludes certain entities that are regulated by other public bodies. The placement agency in question is not, however, regulated by any of those bodies. The foster homes into which the agency places children are licensed by the Department of Mental Health and, therefore, need not be certified by the Department of Human Services.¹ The fact that the foster homes are so licensed does not, however, operate to exclude the agency from the certification requirement of R.C. 5103.03, since the agency is not itself regulated by the Department of Mental Health. I conclude, therefore, that an entity that places children in foster homes that are licensed by the Department of Mental Health as residential care facilities under R.C. 5119.22 and 9 Ohio Admin. Code Chapter 5122:3-5 is not, pursuant to R.C. 5103.02, excluded from the requirement that it be certified by the Department of Human Services as a child care agency under R.C. 5103.03 and applicable rules, where the entity is not itself regulated by the Department of Mental Health.

Your second question asks:

Does the Ohio Department of Human Services have jurisdiction to certify an "institution" or "association" as a child care agency, pursuant to O.A.C. 5101:2-5, for placing abused, neglected, or dependent children in family foster homes where that organization also operates as a community [residential] network approved by the Department of Youth Services pursuant to O.A.C. Chapter 5139-15, for placement of delinquent and unruly children?

A member of your staff has informed me that your question is concerned with a situation in which a single entity places both abused, neglected or dependent children and delinquent or unruly children in the same foster homes.

¹ Your letter indicates that the Department of Mental Health conducts the foster home studies that are required by 8 Ohio Admin. Code 5101:2-5-01(D)(2). Rule 5101:2-5-01 has since been amended and, as it currently appears in [1986-1987 Monthly Record, vol. I] Ohio Admin. Code 5101:2-5-01 at 420-22, no longer requires an agency to make such studies.

As discussed above, Chapter 5101:2-5 of the Ohio Administrative Code governs the certification of child care agencies by the Department of Human Services, and [1986-1987 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-3-01 at 420 defines "agency" as "an organization which places children in homes apart from their parents or legal guardians," excluding juvenile courts. Pursuant to R.C. 5103.02, certification by the Department of Human Services is not required of "any organization, society, association, school, [or] agency...licensed, regulated, approved, operated under the direction of, or otherwise certified by...the department of youth services."²

Your second question relates to an entity that has been approved by the Department of Youth Services under 9 Ohio Admin. Code Chapter 5139-15, and amendments thereto, as a community residential network for the placement of delinquent and unruly children. The Department of Youth Services is authorized to receive custody of children committed to it under R.C. Chapter 2151, see R.C. 5139.05, and to make appropriate placement of the children in, inter alia, institutions, family homes, or group care facilities, see R.C. 5139.06. See also R.C. 2151.38. The Department of Youth Services has express authority to transfer to an approved foster care facility any child committed to the Department. R.C. 5139.39. Similarly, a juvenile court may transfer certain delinquent children to such approved foster care facilities. R.C. 5139.39. With respect to the approval of foster care facilities, R.C. 5139.37 states:

The department of youth services shall adopt and promulgate rules prescribing the standards, including minimum standards for building safety and sanitation, that foster care facilities are required to satisfy in order to obtain department approval. If an application for approval is made to the department in accordance with its rules and the department finds that the application is in proper form and the standards of the foster care facility meet the

² R.C. 5103.03 excludes from its certification requirements "those institutions under the control of the department of youth services." The terms "institution" and "control," in this context, appear to apply to facilities that are managed and operated by the Department of Youth Services, and not to entities, such as community residential networks, that simply have departmental approval for carrying out their activities. See generally R.C. 5139.01(A)(4) (defining "institution," for purposes of R.C. Chapter 5139, to mean "a state facility created by the general assembly that is under the management and control of the division of correctional services of the department of youth services and that maintains sufficient control over juveniles committed to its custody in order to prevent them from committing further acts of delinquency and accomplish their rehabilitation"); R.C. 5139.03; R.C. 5139.06. Entities that are approved or licensed by the Department of Youth Services, rather than being operated by it, thus appear to be excluded from the requirement of certification by the Department of Human Services by virtue of R.C. 5103.02, rather than by virtue of the exception set forth in R.C. 5103.03.

requirements of its rules, the department shall approve the facility for the placement of children apart from their parents for care, supervision, or training.

R.C. 5139.40 contains additional provisions governing the inspection and approval of foster care facilities.

Pursuant to its statutory authority, the Department of Youth Services has, in 9 Ohio Admin. Code Chapters 5139-11 and 5139-23, and amendments thereto, adopted rules establishing standards for agency group homes and for foster homes. It has, in addition, in 9 Ohio Admin. Code Chapter 5139-15, and amendments thereto, adopted standards for "community residential networks." [1986-1987 Monthly Record, vol. I] Ohio Admin. Code 5139-15-02(C) at 119 defines the term "community residential network" as follows:

"Community residential network" means a series of at least five independent living units, foster homes, family group homes, or combination thereof which are connected by one agency which provides counseling, training, and selected programming for youth and residential providers.

Under [1986-1987 Monthly Record, vol. I] Ohio Admin. Code 5139-15-02(A) at 119, the "agency" is a public agency or private corporation that "is responsible for the administration of the juvenile residential program."

The entity with which you are concerned operates as a community residential network under the approval of the Department of Youth Services pursuant to Chapter 5139-15 of the Ohio Administrative Code and R.C. Chapter 5139. That entity is clearly "licensed, regulated, approved, operated under the direction of, or otherwise certified by" the Department of Youth Services so that, pursuant to R.C. 5103.02, it is not considered to be within the purview of R.C. 5103.03-.19 and need not be certified by the Department of Human Services under R.C. 5103.03 and applicable rules in order to perform the functions for which it has been approved by the Department of Youth Services.

A member of your staff has, however, informed me that an entity operating as a community residential network under the approval of the Department of Youth Services may seek to undertake functions relating to the care or placement of children that exceed the jurisdiction of the Department of Youth Services. For example, unlike the Department of Human Services, the Department of Youth Services has no authority to place children in adoptive homes. See R.C. 5103.16(D). See generally R.C. 2151.355. Where an entity that operates as a community residential network undertakes activities that exceed the activities for which the Department of Youth Services has granted approval, those activities are not regulated by the Department of Youth Services. The exception contained in R.C. 5103.02 for an entity that is approved by the Department of Youth Services cannot reasonably be read as extending to activities that are not regulated by the Department of Youth Services. Thus, where an entity operating as a community residential network under the approval of the Department of Youth Services undertakes activities relating to the receipt, care, or placement of children under R.C. 5103.03, and such activities exceed the activities for which the Department of

Youth Services has granted approval, the entity is subject to requirements that it be certified by the Department of Human Services.

I conclude, therefore, that an entity that has been approved by the Department of Youth Services under R.C. Chapter 5139 and applicable rules as a community residential network is, pursuant to R.C. 5103.02, excluded from the requirement that it be certified by the Department of Human Services as a child care agency under R.C. 5103.03 and applicable rules to the extent that its activities come within the approval granted by the Department of Youth Services. Such an entity is, however, not excluded from the requirement that it be certified by the Department of Human Services as a child care agency under R.C. 5103.03 and applicable rules where it undertakes activities that exceed those for which the Department of Youth Services has granted approval.

I am aware that 9 Ohio Admin. Code 5139-15-01(C) states expressly that the Department of Youth Services is not the exclusive state licensing agency for community residential networks for delinquent and unruly youth and "will accept other licensure from other authorized state agencies in lieu of its own." See 9 Ohio Admin. Code 5139-11-01 and 5139-23-01 (containing similar provisions with respect to agency group homes for delinquent and unruly youth and foster homes for delinquent and unruly youth). See also 9 Ohio Admin. Code 5139-15-03(G) ("[t]he department [of youth services] will attempt to work with other state and county agencies, particularly those involved in regulatory and monitoring functions, so as to minimize duplication of effort of all concerned parties"). You have, however, presented me with a situation in which the entity in question has been approved by the Department of Youth Services, and I am not considering whether, if the entity were not so approved, certification by the Department of Human Services would obviate the need for approval by the Department of Youth Services. See generally 1984 Op. Att'y Gen. No. 84-007; note 4, infra.

Your third question asks:

Does the Ohio Department of Human Services have jurisdiction to certify an "institution" or "association" as a children's residential center, pursuant to O.A.C. Chapter 5101:2-9, where one building on the grounds of the institution is licensed by the Ohio Department of Mental Health to provide day treatment to children not residing at the facility?

A member of your staff has informed me that you are interested also in the situation in which children residing at the facility participate in the day treatment licensed by the Ohio Department of Mental Health.

[1986-1987 Monthly Record, vol. I] Ohio Admin. Code Chapter 5101:2-9 at 433-55 governs the certification by the Department of Human Services of children's residential centers, defined in rule 5101:2-9-01(G), as follows:

"Children's residential center," referred to hereafter as CRC, means a facility in which eleven or more children, including the children of any staff residing at the facility, are given nonsecure care and supervision twenty-four hours a day for hire, gain, or

reward by a person or persons who are unrelated to such children by blood or marriage, or who is not the appointed guardian of such children. Any individual who provides care for children from only a single-family group, placed there by their parents or other relative having custody, shall not be considered as being a CRC.

You have inquired about a facility that has one building that is licensed by the Department of Mental Health as a community mental health facility to provide day treatment to children who do not reside at the facility and also, in some instances, to children who do reside at the facility. The certification granted by the Ohio Department of Mental Health references R.C. 1737.28 (providing for outpatient benefits for mental or emotional disorders under a group contract of a medical care corporation), R.C. 1738.24 (providing for outpatient benefits for mental or emotional disorders under a group contract of a health care corporation), and R.C. 3923.28 (providing for outpatient benefits for mental or emotional disorders under a policy of group sickness and accident insurance).³ R.C. 1737.28, R.C. 1738.24, and R.C. 3923.28 relate to benefits for mental health services performed in a community mental health facility that is certified by the Department of Mental Health as being in compliance with standards established under R.C. 5119.01(I). R.C. 5119.01(I) provides that the Director of Mental Health shall:

At his discretion, adopt rules establishing standards for the adequacy of services provided by community mental health facilities, and certify the compliance of such facilities with the standards for the purpose of authorizing their participation in the health care plans of medical care corporations under Chapter 1737., health care corporations under Chapter 1738., and sickness and accident insurance policies issued under Chapter 3923. of the Revised Code.

R.C. 5119.01(M) defines a "community mental health facility" to mean "a facility which provides community mental health services and is included in the comprehensive annual plan for the community mental health service district in which it is located." See also R.C. 1737.28 and 1738.24 (adopting the same definition of "community mental health facility"); R.C. 3923.28 (adopting a somewhat different definition of "community mental health facility"). Rules of the Department of Mental Health governing the certification of community mental health facilities appear in 9 Ohio Admin. Code Chapter 5122:3-7.

Your question is whether the fact that one building on the grounds of the children's residential center is certified by

³ The certification granted by the Ohio Department of Mental Health also references R.C. 1739.19, providing for outpatient benefits for mental or emotional disorders under a group contract of a hospital service association. R.C. 1739.19 and other provisions of R.C. Chapter 1739 were, however, repealed by Sub. S.B. 124, 117th Gen. A. (1987) (eff. Oct. 1, 1987), and, accordingly, are not discussed in the opinion. R.C. Chapter 1739 provided for the establishment, organization, and operation of hospital service associations. See generally R.C. 3941.47-.53.

the Department of Mental Health as a community mental health facility operates under R.C. 5103.02 to exclude the center from the requirement that it be licensed by the Department of Human Services under R.C. 5103.03. That question must be answered in the negative since, under the facts presented, the certification by the Department of Mental Health extends only to a single building of the facility and only to the day treatment of children.

R.C. 5103.02 excludes from regulation by the Department of Human Services facilities that are regulated by certain other governmental bodies. The evident intention is to prevent a situation in which those facilities are subject to dual regulation.⁴ See generally R.C. 121.17. Implicit in the statutory scheme is a recognition of the expertise of the named governmental bodies, including the Department of Mental Health, in regulating facilities that serve their particular purposes. The goal of assuring adequate regulation of any facility that houses children is, however, not satisfied if the exclusionary provisions of R.C. 5103.02 extend to facilities that are not fully regulated by the governmental bodies named therein. In the situation that you have presented, the Department of Mental Health does not regulate the basic residential aspects of the center. Instead, it regulates only a day treatment program in a single building of the facility. It cannot reasonably be concluded that the children's residential center in question is "licensed, regulated, approved, operated under the direction of, or otherwise certified by" the Department of Mental Health for purposes of R.C. 5103.02. The center, therefore, remains under the jurisdiction of the Department of Human Services and must comply with such rules of the Department as are applicable. Accordingly, I conclude that the fact that one building on the grounds of a children's residential center is certified by the Department of Mental Health as a community mental health facility under R.C. 5119.01(I) and applicable rules to provide day treatment to children does not operate under R.C. 5103.02 to exclude the center from the requirement that it be certified by the Department of Human Services as a

⁴ Your letter of request references 1984 Op. Att'y Gen. No. 84-007, which states in the syllabus: "R.C. 5123.19 imposes upon the Director of Mental Retardation and Developmental Disabilities the duty of licensing any residential facility, as that term is defined in R.C. 5123.19(A)(1), whether or not such facility is certified by the Department of Public Welfare [now the Department of Human Services] under R.C. 5103.03." As your letter notes, Op. No. 84-007 discusses only the duty of the Department of Mental Retardation and Developmental Disabilities to license certain facilities and does not discuss the language of R.C. 5103.02 that exempts facilities licensed by other bodies from licensure by the Ohio Department of Human Services. Op. No. 84-007 thus does not consider the question whether the Ohio Department of Human Services should license a facility that has been licensed by the Department of Mental Retardation and Developmental Disabilities, and that precise question is not raised by your request. It is, however, clear that a determination as to whether the Ohio Department of Human Services should license a facility that is subject to licensure by another public body should be made with due consideration of R.C. 5103.02.

children's residential center under R.C. 5103.03 and applicable rules.

Your fourth question asks:

Does the Ohio Department of Human Services have jurisdiction to certify an "institution" or "association" as a children's residential center pursuant to O.A.C. [Chapter] 5101:2-9 where the facility's on-grounds school is approved by the Ohio Department of Education?

As discussed above, Chapter 5101:2-9 of the Ohio Administrative Code governs the certification by the Department of Human Services of children's residential centers. Your question concerns a residential facility that has on its grounds a school that has been approved by the Department of Education. The fact that the school has been so approved does not operate to exclude the entire facility from regulation by Department of Human Services pursuant to R.C. 5103.02. Rather, as discussed in connection with your third question, where only certain aspects of the activities of a particular facility are regulated by one of the governmental bodies named in R.C. 5103.02, it cannot reasonably be concluded that the entire facility is excluded from regulation by the Department of Human Services. The children's residential center in question is not "licensed, regulated, approved, operated under the direction of, or otherwise certified by the department of education" for purposes of R.C. 5103.02 simply because a day school that is located on its grounds has the approval of the Department of Education. Rather, the facility remains subject to the jurisdiction of the Department of Human Services and must comply with applicable rules and certification requirements. I conclude, therefore, that the fact that a day school located on the grounds of a children's residential center is approved by the Department of Education does not operate under R.C. 5103.02 to exclude the center from the requirement that it be certified by the Department of Human Services as a children's residential center under R.C. 5103.03 and applicable rules.

Your letter indicates that questions concerning the extent of the exclusion provided by R.C. 5103.02 have arisen in light of 1983 Op. Att'y Gen. No. 83-065, which concluded that the Ohio Veterans' Children's Home (OVCH) is not subject to regulation by the Department of Human Services because there exists "a relationship between the OVCH and the State Department of Education under which the OVCH is 'licensed, regulated, approved, operated under the direction of, or otherwise certified by the department of education' within the meaning of the exception set forth in R.C. 5103.02." Op. No. 83-065 at 2-271 through 2-272. Op. No. 83-065 does not state expressly that all aspects of operations of the OVCH are regulated by the State Department of Education. Thus, it is not clear whether the OVCH would be excluded from regulation by the Department of Human Services under the interpretation of R.C. 5103.02 discussed above. An examination of the statutes governing the OVCH does, however, disclose an additional basis for its independence from the Department of Human Services. R.C. 5909.02 states expressly: "The board [of trustees of the OVCH] shall govern, conduct, and care for such home, the property, and the children therein as provided in the laws governing the department of human services so far as they are not inconsistent with the laws governing such home." The board of trustees of the OVCH is, thus, required to comply with laws

governing the Department of Human Services to the extent that they are not inconsistent with the laws governing the OVCH. The fact that the trustees have been given this duty indicates a legislative intent to exempt the OVCH from regulation by the Department of Human Services. Such exemption arises by virtue of the provisions of R.C. 5909.02 and is effective regardless of the extent to which the OVCH is regulated by the Department of Education. Of course, the exemption applies only to the OVCH and does not extend to other facilities for children. I conclude accordingly, that, pursuant to R.C. 5909.02, the OVCH is exempt from regulation by the Department of Human Services. I am aware that this interpretation of R.C. 5909.02 differs from that set forth in 1982 Op. Att'y Gen. No. 82-023 (overruled by Op. No. 83-065) and quoted in Op. No. 83-065, stating that the relevant portion of R.C. 5909.02 "concerns only the authority of the board over the children and property under its control and does not deal with the issue of regulation of the OVCH by the Ohio Department of Public Welfare [now the Department of Human Services]." Op. No. 83-065 at 2-270; Op. No. 82-023 at 2-70. I find, however, that the interpretation adopted herein reflects the evident intent of the General Assembly in enacting R.C. 5909.02 and that it is consistent with the conclusion reached in Op. No. 83-065. See generally R.C. 1.47; R.C. 1.49.

Your fifth question asks:

Does the Ohio Department of Human Services have jurisdiction to certify an "institution" or "association" that places children in foster homes (now labeled "host homes" by the organization), where the organization is certified as an approved drug treatment program by the Bureau of Drug Abuse of the Ohio Department of Mental Health pursuant to O.R.C. Section 5122.51(C)? These host homes are considered by the organization and by the Ohio Department of Human Services to be an essential component to the drug treatment program. However, in his letter attached to the certificate the Acting Administrator of the Bureau of Drug Abuse specifies that the "certification is only for the program at the address indicated on the certificate and does not include host homes."

R.C. 5122.51 states, in part:

(A) The department of mental health shall maintain a current registry of the following:

...
(2) Persons, agencies, and organizations, public or private, charitable or for profit, that maintain or conduct a special program for the reception, treatment, care, housing, counselling, rehabilitation, or other service aiding or puporting to aid drug dependent persons or persons in danger of drug dependence.

....
(C) Upon voluntary application of any drug treatment program described in division (A)(2) of this section, the director of mental health may certify such program as an approved drug treatment program. The director may adopt rules establishing standards and procedures for certification, and such rules shall be published and made available to the public. A

certification under this division may be withdrawn by the director at any time the drug treatment program fails to meet the standards for issuing such certification. No program described in division (A)(2) of this section shall represent in any manner that it has been certified by the director if such program is not presently certified. Proceedings under this division are not subject to Chapter 119. of the Revised Code.

Rules implementing these provisions appear in 9 Ohio Admin. Code Chapter 5122:3-9.

You have described an organization consisting of a central body that places children in host homes. Your request relates only to requirements that are applicable to the central body, and does not raise any questions concerning regulation of the host homes themselves. The central body of the organization with which you are concerned clearly comes within the definition of "institution" or "association" appearing in R.C. 5103.02 since it is a party to the placing of children in foster homes.⁵ The organization is, thus, subject to regulation by the Department of Human Services under R.C. 5103.03, unless it comes within the exceptions set forth in R.C. 5103.02. See generally Op. No. 83-065. Your letter of request states that the organization has been certified by the Department of Mental Health as an approved drug treatment program under R.C. 5122.51(C). Pursuant to R.C. 5103.02, certification by the Department of Mental Health excludes an organization from the requirement that it be certified by the Department of Human Services under R.C. 5103.03. The attachment to your letter indicates, however, that the Department of Mental Health, through the Acting Administrator of the Ohio Bureau of Drug Abuse, has stated expressly that the certification extends only to "the program at the address indicated on the certificate and does not include host homes." It thus appears that the Department of Mental Health has certified the drug treatment program operated by the organization at the address indicated on its certificate, but has not undertaken regulation of the arrangements under which participants are housed. In such circumstances, it cannot be concluded that the placement of children in host homes has been "licensed, regulated, approved, operated under the direction of, or otherwise certified by" the Department of Mental Health for purposes of R.C. 5103.02, so as to be excluded from the requirement that the organization be certified by the

⁵ I am aware that in the syllabus to 1951 Op. Att'y Gen. No. 914, p. 729, my predecessor stated that "[t]he terms 'institution' and 'association,' as defined in Section 1352-6, General Code [predecessor to R.C. 5103.02], are not sufficiently broad so as to comprehend...persons engaged in caring for children who have not been committed to their custody by an order of the juvenile court...." That opinion was modified by 1952 Op. Att'y Gen. No. 1199, p. 159, to recognize, at 165, that G.C. 1352-6 was "not limited to those organizations to whom the juvenile court may commit 'dependent, neglected or delinquent' children." Subsequent amendments have resulted in the existing version of R.C. 5103.02, which is clearly not limited to instances in which children are cared for pursuant to court commitment.

Department of Human Services under R.C. 5103.03 to carry out this function.

As discussed above, the exclusions set forth in R.C. 5103.02 for entities that are regulated by other governmental bodies are intended to prevent dual regulation of a single function of an entity, and not to totally exclude certain functions of such entity from regulation by any governmental body. R.C. 5122.51 authorizes the Director of Mental Health to certify as approved drug treatment programs public or private persons or agencies that maintain programs for the housing of drug dependent persons, and would permit the Director to certify residential arrangements as part of an approved drug treatment program, if he chose to do so. Unless such certification is granted, however, the process of placing children in foster homes in conjunction with a drug treatment program remains subject to the certification requirements of R.C. 5103.03. I conclude, therefore, that when an organization consisting of a central body that places children in host homes is certified by the Department of Mental Health under R.C. 5122.51(C) as an approved drug treatment program and the Department of Mental Health states that the certification applies only to the program at the address indicated on the certificate and does not include host homes, the certification operates under R.C. 5103.02 to exclude the organization from the requirement that it be certified by the Department of Human Services under R.C. 5103.03 and applicable rules with respect to its approved drug treatment program. Such an organization is, however, not excluded from the requirement that it be certified by the department of Human Services under R.C. 5103.03 and applicable rules where it undertakes activities, such as the placing of children in foster homes, that exceed those for which the Department of Mental Health has granted certification.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. An entity that places children in foster homes that are licensed by the Department of Mental Health as residential care facilities under R.C. 5119.22 and applicable rules is not, pursuant to R.C. 5103.02, excluded from the requirement that it be certified by the Department of Human Services as a child care agency under R.C. 5103.03 and applicable rules, where the entity is not itself regulated by the Department of Mental Health.
2. An entity that has been approved by the Department of Youth Services under R.C. Chapter 5139 and applicable rules as a community residential network is, pursuant to R.C. 5103.02, excluded from the requirement that it be certified by the Department of Human Services as a child care agency under R.C. 5103.03 and applicable rules to the extent that its activities come within the approval granted by the Department of Youth Services. Such an entity is, however, not excluded from the requirement that it be certified by the Department of Human Services as a child care agency under R.C. 5103.03 and applicable rules where it undertakes activities that exceed those for which the Department of Youth Services has granted approval.

3. The fact that one building on the grounds of a children's residential center is certified by the Department of Mental Health as a community mental health facility under R.C. 5119.01(I) and applicable rules to provide day treatment to children does not operate under R.C. 5103.02 to exclude the center from the requirement that it be certified by the Department of Human Services as a children's residential center under R.C. 5103.03 and applicable rules.
4. The fact that a day school located on the grounds of a children's residential center is approved by the Department of Education does not operate under R.C. 5103.02 to exclude the center from the requirement that it be certified by the Department of Human Services as a children's residential center under R.C. 5103.03 and applicable rules. (1983 Op. Att'y Gen. No. 83-065, distinguished.)
5. When an organization consisting of a central body that places children in host homes is certified by the Department of Mental Health under R.C. 5122.51(C) as an approved drug treatment program and the Department of Mental Health states that the certification applies only to the program at the address indicated on the certificate and does not include host homes, the certification operates under R.C. 5103.02 to exclude the organization from the requirement that it be certified by the Department of Human Services under R.C. 5103.03 and applicable rules with respect to its approved drug treatment program. Such an organization is, however, not excluded from the requirement that it be certified by the Department of Human Services under R.C. 5103.03 and applicable rules where it undertakes activities, such as the placing of children in foster homes, that exceed those for which the Department of Mental Health has granted certification.