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APPROPRIATIONS: Insufficient funds to pay under a statutory formula

MENTALLY DEFICIENT AND MENTALLY ILL PERSONS: Community mental health boards

Where sufficient funds are available, the state must pay 90% of the annual net cost for services rendered pursuant to an approved plan and budget of a community mental health board.

A state agency may only spend money to implement a statutory program for which the legislature has appropriated funds to that agency for that purpose.

Where funds appropriated by the legislature are not sufficient to pay 90% of the annual net cost of all county community mental health programs, the state officials responsible for administration of the appropriation must reduce payments to the several participating county community mental health boards on a pro rata basis.

Opinion No. 4952

March 22, 1976.

Mr. Gerald H. Miller, Director
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You have raised certain questions regarding the State of Michigan's fiscal responsibility in participating in the funding of community mental health programs, as required by 1974 PA 258, MCLA 330.1001 *et seq*; MSA 14.800(1) *et seq*. Your question may be paraphrased as follows:

1. Is the state required to participate in funding a community mental health program with regard to a service provided by that program which may not be provided by the State of Michigan in its mental health facilities?
2. Is the state required to participate in funding in accordance with 1974 PA 258 regardless of the amount of money appropriated to the Department of Mental Health for that purpose by the Legislature?
3. How is Section 318 of 1974 PA 258, MCLA 330.1318; MSA 14.800(318) implemented where the amount of funds appropriated by the Legislature is insufficient to fully realize the formula for reimbursement set forth in that section?

Turning to the first question, Section 308 of the Mental Health Code, MCLA 330.1308; MSA 14.800(308) sets forth the duty of the state to pay 90% of the annual net cost of the community mental health program as follows:

"Except as is otherwise provided in this chapter, and subject to the constraint of funds actually appropriated by the state legislature for such purpose, the state shall pay 90% of the annual net cost of a county community mental health program that is established and administered in accordance with chapter 2."

The term "community mental health program" is not directly defined in the Mental Health Code; however, the term is inferentially defined in Chap-

ter 2 of the Code. Section 206, MCLA 330.1206; MSA 14.800(206), provides that a community mental health program shall provide "mental health services" for persons located within its geographical limits and further provides that the Department of Mental Health shall designate by rule the *minimum* services which must be provided. A "mental health service" is equivalent to a "service" as that term is used in Chapter 2 of the Code, MCLA 330.1200; MSA 14.800(200), and the latter term is defined in Section 208, MCLA 330.1208; MSA 14.800(208), which provides as follows:

"Sec. 208. A service operated within a county program shall be directed to at least one of the 5 following mental health areas: mental illness, mental retardation, organic brain and other neurological impairment or disease, alcoholism, or substance abuse. Priority shall be given to the areas of mental illness and mental retardation. A service is any of the following:

- (a) Prevention, consultation, collaboration, educational, or information service.
- (b) Diagnostic service.
- (c) Emergency service.
- (d) Inpatient service.
- (e) Outpatient service.
- (f) Partial hospitalization service.
- (g) Residential, sheltered, or protective care service.
- (h) Habilitation or rehabilitation service.
- (i) Any other service approved by the department."

It can be seen from the preceding sections that a community mental health program consists of those services specifically enumerated in Section 208, plus any other services which are required or approved by the Department of Mental Health. The basic mechanism whereby the Department of Mental Health would approve additional services is contained in Section 232 and Section 234 of the Mental Health Code, MCLA 330.1232; MSA 14.800(232) and MCLA 330.1234; MSA 14.800(234), which set forth the Department of Mental Health's duty to review and approve the community mental health board's annual plan and budget and set forth certain considerations which must be taken into account in the approval process.

Once there is an approved plan and budget, Section 240 of the Code, MCLA 330.1240; MSA 14.800(240) provides as follows:

"Sec. 240. All expenditures by a county program necessary to execute such county program shall be eligible for state financial support, except those excluded under section 242. Expenditures necessary to execute a county program shall include expenditures for staff training and staff education and for mental health research when such expenditures are necessary or appropriate to the execution of a county program."¹

¹ Section 242, MCLA 330.1242; MSA 14.800(242), lists certain categories of expenditures which will not be eligible for the financial support. These categories are not directly relevant to the questions which you have posed.

In answer to the first question, therefore, it can be seen that if there are sufficient available funds the state must pay 90% of the annual net cost for any service which was rendered pursuant to an approved plan and budget of the community mental health board.

Turning to the second question, Const 1963, art 9, § 17 provides as follows:

"Sec. 17. No money shall be paid out of the state treasury except in pursuance of appropriations made by law."

Pursuant to this provision, it is clear that an agency of the state can only spend money for the implementation of the specific statutory program which the Legislature has appropriated to that agency for that purpose. *White v Department of Social Services*, 20 Mich App 481; 174 NW2d 315 (1969). Section 308 of the Mental Health Code, MCLA 330.1308; MSA 14.800(308) also limits the amount which can be paid for community mental health programs to the amount actually appropriated by the state Legislature for such purpose:

"Sec. 308. Except as is otherwise provided in this chapter, *and subject to the constraint of funds actually appropriated by the state legislature for such purpose*, the state shall pay 90% of the annual net cost of a county community mental health program that is established and administered in accordance with chapter 2." [Emphasis supplied.]

Lastly, the appropriation bill for the Department of Mental Health, 1975 PA 257, contains in Section 5 a requirement that an agency not spend in excess of the amount appropriated to it.

The method by which the appropriated funds are to be divided in case the amount is insufficient to fully fund all approved plans and budgets is contained in Section 232 of the Mental Health Code, MCLA 330.1232; MSA 14.800(232), which provides in pertinent part:

". . . If the amount of state appropriated funds is insufficient to fund all approved plans and budgets, the department shall establish the manner by which the appropriated funds are to be divided among the county programs."

Section 232 is harmonious with Section 5 of the Department of Mental Health's appropriations act, 1975 PA 257, which provides as follows:

"Sec. 5. Except as otherwise provided by law, where the amount appropriated in this act is less than the amount called for or required to be distributed by existing law, the state official, or body responsible for the administration of the particular appropriation shall reduce the payments under the appropriation made in this act upon a pro rata basis in a manner that the payments shall not exceed the appropriations contained in this act. A violation of this section constitutes a misfeasance in office."

The third question involves Section 318 of the Mental Health Code, MCLA 330.1318; MSA 14.800(318). Briefly, that section sets forth a scheme whereby community mental health boards will be brought into accord with the 90-10 funding scheme set forth in the Mental Health Code. Those boards which now pay less than 10% of the total cost of their com-

munity mental health program will be responsible only for the percentage of the total cost for which they were responsible in a base year, plus an additional $\frac{1}{2}\%$ which is added each year until the 90-10 ratio is met. For those counties who were paying more than 10% of the total cost in the base year, their contribution will be reduced by 1% each year until the 90-10 ratio is met. For any county which contributed 25% or more of the total cost during the base year, its percentage shall be reduced by 2.5% per year until such time as the 90-10 ratio is met. If the amount appropriated is insufficient to carry forth the scheme set forth in Section 318, the same consideration would apply as applied in the answer to your second question above. The Department of Mental Health can only spend the amount appropriated to it for community mental health programs, and if that amount is inadequate it must take steps pursuant to Section 232 of the Mental Health Code, MCLA 330.1232; MSA 14.800(232) and 1975 PA 257, § 5, to distribute the funds.

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ADMINISTRATIVE LAW AND PROCEDURE:

Incorporation by reference

ADMINISTRATIVE LAW AND PROCEDURE:

Amendments or rescissions having solely formal purposes

LABOR AND EMPLOYMENT: Occupational Safety and Health Act

In adopting amendments to its rules that would add to safety standards in effect under the Michigan Occupational Safety and Health Act, the Occupational Safety Standards Commission may not bypass the notice and hearing requirements of the Administrative Procedures Act even though adoption of these standards is for the purpose of complying with federal requirements.

The Occupational Safety Standards Commission may not adopt rules to add conforming federal standards to safety standards continued in effect without appointing and consulting with an advisory committee as provided by the Michigan Occupational Safety and Health Act.

The federal occupational safety and health standards promulgated by the U.S. Department of Labor after the date on which the Michigan Occupational Safety and Health Act was enacted into law and prior to the effective date of the Act may not be incorporated by reference.

Opinion No. 4959

March 22, 1976.

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You have requested my opinion on the following questions:

1. May the Occupational Safety Standards Commission utilize the promulgation procedure authorized by Section 44 of the Admin-