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76/005.2

**MENTALLY DEFICIENT AND MENTALLY ILL PERSONS: Treatment in a mental health institution.**

All patients in a mental health institution are entitled to the same rights as other patients in the facility.

A person who is in a mental health institution because he is either (1) been transferred from a correctional facility, or (2) been committed to a mental institution by court of criminal jurisdiction, or (3) is incompetent to stand trial in a criminal proceeding, may not for those reasons be automatically segregated from other patients.

More stringent security measures with regard to patients transferred from prison, individuals found incompetent to stand trial, individuals found not guilty by reason of insanity, may be taken by a mental health institution if necessary to protect other patients.

Opinion No. 5092

October 5, 1976.

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You have jointly asked for my opinion on certain questions relating to the provision of services in mental health institutions to individuals transferred to a mental health institution from a correctional facility or committed to a mental health institution by a court exercising criminal jurisdiction. I have paraphrased your questions and will answer them *seriatim*.

1. Is an individual who is in an institution of the Department of Mental Health as the result of a transfer from a correctional institution or as the result of an order of a criminal court entitled to the same rights, privileges and benefits as other persons receiving treatment in the mental health institutions?

The Mental Health Code, 1974 PA 258, Ch 10, §§ 1000 through 1006; MCLA 330.2000 - 330.2006; MSA 14.800(1000) - 14.800(1006), provides for the transfer of a prisoner in a correctional institution to a mental health facility when the prisoner is mentally ill or mentally retarded and in need of mental health services. 1974 PA 258, §§ 1020 through 1044; MCLA

330.2020 - 330.2044; MSA 14.800 (1020) - 14.800(1044) provide for the hospitalization and treatment of an individual who is incompetent to stand trial in a criminal proceeding. An order committing an individual as incompetent to stand trial cannot extend beyond 15 months or one-third of the maximum sentence the defendant could receive if convicted of the charges against him, whichever is less. MCLA 330.2034; MSA 14.800(1034). If the individual is still in need of treatment, he may be detained thereafter only if civil commitment proceedings are successfully completed in probate court. Persons found not guilty of a criminal offense by reason of insanity are committed to a mental health institution pursuant to 1974 PA 258, § 1050; MCLA 330.2050; MSA 14.800(1050). That section limits such commitments to a maximum of 60 days. If within that 60-day period it is determined that the individual requires treatment in a mental health institution, civil commitment proceedings must be instituted in probate court.

Once an individual has been civilly committed to a mental health institution by a probate court, he is entitled to the same treatment as any other civilly committed patient. Any action restricting his rights must be taken in compliance with the Mental Health Code and rules of the Department of Mental Health.

The rights of a person in a mental health institution are primarily governed by the Mental Health Code, 1974 PA 258, Ch 7, § 330.1700 *et seq*; MSA 14.800(700) *et seq*.<sup>1</sup> The rights guaranteed by Chapter 7 are guaranteed for all individuals who are "recipients" of mental health services. Additionally, certain rights are guaranteed for individuals who are "residents" of mental health facilities. The terms "recipient" and "resident" are defined in MCLA 330.1700; MSA 14.800(700) as follows:

“ . . . (d) 'Resident' means a person who resides in a facility.

(e) 'Recipient' means a person who receives mental health services from a facility, or a person who receives mental health services from an entity other than a facility which is operated by or under contract with the department or a county community mental health program. . . .”

A person who is in an institution of the Department of Mental Health because he is incompetent to stand trial, has been found not guilty by reason of insanity or has been transferred from a correctional institution falls within the language of both of the above quoted definitions.

The Mental Health Code does contain specific limitations on the rights of individuals falling within one or all of the categories described above. For example, MCLA 330.1724; MSA 14.800(724), dealing with the fingerprinting and photographing of recipients of mental health services, specifically is made inapplicable to individuals falling within all three categories. Therefore, except in such instances the answer to your first question is that an individual who is in a mental health facility is entitled to the same rights as any other patient in that facility. However, as will be noted in my response to the other questions you asked, that right is limited by the right other patients in the facility have to be safe and secure.

<sup>1</sup> A person in an institution is, of course, also entitled to rights guaranteed by the state or federal constitutions or applicable provisions of other statutes. MCLA 330.1704; MSA 14.800(704).

2. May additional, more stringent security measures be taken with regard to residents of a mental health facility who have been transferred from a correctional institution, have been found incompetent to stand trial, or have been found not guilty by reason of insanity?

1974 PA 258, § 744; MCLA 330.1744; MSA 14.800(744), provides:

"The freedom of movement of a resident shall not be restricted more than is necessary to provide mental health services to him, to prevent injury to him or to others, or to prevent substantial property damage, except that security precautions appropriate to the condition and circumstances of a resident admitted by order of a criminal court or transferred as a sentence serving convict from a penal institution may be taken."

It is clear from this section that more stringent security measures with regard to prisoner transferees, individuals found incompetent to stand trial, and individuals found not guilty by reason of insanity may be taken.

The above quoted or cited statutory provisions are reasonable and rational and do not violate rights of the affected individuals.

3. Would the mingling of persons who are prisoner transferees, persons found incompetent to stand trial, and/or persons found not guilty by reason of insanity with patients civilly committed to mental health institutions by a probate court or voluntarily in the institution infringe upon any rights of the latter categories of patients?

Several courts have held that patients in state mental institutions have a 14th Amendment right to be secure in their life and person, and that the state has a duty to protect such individuals from attacks by fellow patients. *Spence v Staras*, 507 F2d 554 (CA7, 1974); *Welsch v Likins*, 373 F Supp 487 (D Minn, 1974); *New York Association of Retarded Children v Rockefeller*, 357 F Supp 752 (ED NY, 1973). Furthermore, 1974 PA 258, § 1708; MCLA 330.1708; MSA 14.800(708) provides that a resident of a mental health facility is entitled to a safe and humane living environment. It may, therefore, be necessary to segregate unusually violent patients for the protection of the other patients. At least one court has recently so held. *American Federation of State, County and Municipal Employees, AFL-CIO v Walker*, 27 Ill App 3rd 883; 327 NE2d 568 (1975).

There is no requirement, however, that all patients who are prisoner transferees, individuals found incompetent to stand trial, or individuals found not guilty by reason of insanity be segregated from other patients. As the Supreme Court of New Jersey recently said in *Singer v State*, 63 NJ 319; 307 A2d 94 (1973), a state does not have to maintain separate units for civil and criminal patients, because a hospital does not become a jail when prisoners or other individuals committed by courts of criminal jurisdiction are housed there for treatment. Furthermore, the automatic segregation of such patients would be in violation of the provisions of the Mental Health Code.

Therefore, in answer to your third question, prisoner transferees, persons

found incompetent to stand trial, and persons found not guilty by reason of insanity may not be automatically segregated from other patients.

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**HOSPITALS:** Surcharge to non-residents by a community hospital.

A community hospital may impose a surcharge on hospital bills of non-residents but, in so doing, may not establish a surcharge for non-residents that is arbitrary, invidious and denies equal protection of the law.

Opinion No. 5105

October 5, 1976.

Honorable Casmer P. Ogonowski  
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You have addressed to me a letter which states:

"The Peoples Community Hospital Authority organized under Act 47 of the Public Acts of 1945, as amended, consisting of 23 communities located in western Wayne and eastern Washtenaw counties, are owners and operators of four general acute care hospitals: Annapolis Hospital in Wayne, Beyer Memorial Hospital in Ypsilanti, Outer Drive Hospital in Lincoln Park, and Seaway Hospital in Trenton.

"The Authority hospitals were built in part with the use of federal funds (Hill-Burton) and revenue bonds paid for through assessments on the participating municipalities.

"The Authority has for a number of years levied a surcharge of 20 percent for all patient admissions from patients who do not reside in one of the participating municipalities."

You then requested my opinion as to whether the Authority can add the 20 percent surcharge to the bill for hospital services provided to non-residents.

The Peoples Community Hospital Authority was established pursuant to 1945 PA 47; MCLA 331.1 *et seq*; MSA 5.2456(1) *et seq*. The title of this act indicates that the act authorizes, *inter alia*, two or more cities, townships and villages to maintain and operate one or more community hospitals and grants to the Authority certain powers of a body corporate.

1945 PA 47, *supra*, § 1 indicates the Authority may issue bonds for maintaining and operating one or more community hospitals.

1945 PA 47, *supra*, § 2 authorizes the Authority to contract with an individual, firm or corporation for the furnishing of hospital care to persons at the private expense of the individual, firm or corporation. Such authorization clearly includes the power to set rates in such a contract.