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STATE OF MAINE

Inter-Departmental Memorandum Date July 9, 1975

To Margaret I. Bruns, Acting Superintendent

Dept. Pineland Center

From Courtland D. Perry, Asst. Att'y General

Dept. Attorney General

Subject _____

We have your request for an opinion of this office respecting the following:

1. Responsibility of the State of Maine in providing for any major medical expenses incurred by residents over the age of majority whether in Pineland Center or in private state funded facilities in the community.

(By telephone it has been clarified that your reference to "private state funded facilities in the community" means a boarding home or nursing home, the cost of whose services may be paid for in whole or in part by the Department of Health and Welfare with respect to persons placed therein.)

2. Does not the Superintendent have the authority to consent to the release of information from Pineland Center for enrolled residents who are unable to give informed consent, who are over age 18, and who have not been declared incompetent through court action?

We respond informally to your questions.

1. Dividing your first question into two parts, we first discuss the responsibility of the state in connection with major medical expenses incurred with respect to an adult resident of the Pineland Center. An analysis of certain provisions of 34 M.R.S.A. Chapter 195, "Support at State Institutions," provides answers to this portion of your question. With reference to Chapter 195, the definition of "care and treatment" as set forth in section 2511 is pertinent.

"'Care and treatment' for the purposes of this chapter shall include all goods and services provided to a patient, furnished by, or caused to be furnished by, the State."

We construe major medical care to be included within such definition. 34 M.R.S.A. § 2512 describes the persons legally liable for "care and treatment." We quote it in its entirety.

"Each patient and the spouse, adult child and parent, jointly and severally, shall be legally liable from the date of admission for the care and treatment of any patient committed or otherwise legally admitted to either state hospital for the mentally ill, the Pineland Center or the Elizabeth Levinson Center, except that a parent shall not be legally liable for care and treatment unless the patient was wholly or partially dependent for support upon such parent at the time of admission.

"No child of a patient shall be liable for any part of such costs for a parent who willfully failed to support such child prior to the child's

18th birthday. Any child claiming such exemption shall be required to furnish the department with clear and convincing evidence substantiating such claim.

"The department shall not charge any parent for the care and treatment of a child beyond the child's 18th birthday, or beyond 6 months from the date of admission, whichever occurs later."

The state would be responsible for the expense of major medical care furnished, or caused to be furnished, by it to an adult patient of the Pineland Center when the Department of Mental Health and Corrections has determined that there is no legally liable person having the financial ability to pay such expenses, such determination being made pursuant to 34 M.R.S.A. § 2513.

We note that your request contained in question 1 is based upon a memorandum to you from Lance C. Brown, wherein particular facts are set out. It appears from the memorandum that the patient in question is 23 years of age and was admitted to the Pineland Center on April 5, 1957. There is no indication as to the patient's ability to pay expenses for major medical care, but it is clear from a reading of 34 M.R.S.A. § 2512 that the parents would not be legally liable for her "care and treatment" and thus would not be legally liable for the expenses of major medical care. Under the statute, the parents would have been legally liable in this case only until the patient reached the age of majority.

The second part of your first question relates to the responsibility of the state for the expenses of major medical care incurred with respect to the adult Pineland Center patient who has been released from the institution and who resides in a residential facility in the community. We construe 34 M.R.S.A. Chapter 195, "Support at State Institutions," not to apply in this instance. Such chapter relates only to "care and treatment" furnished or caused to be furnished by the state "at" the institution, meaning while the person is an inpatient.

The state's responsibility for expenses for major medical care received by the released Pineland patient is controlled by 22 M.R.S.A. Chapter 855, "Aid to Needy Persons," and would arise if such person is "medically indigent" as determined under that chapter and in accordance with the regulations of the Department of Health and Welfare. With respect to entitlement to aid, including medical care, 22 M.R.S.A. § 3174 provides in part:

The department, under rules and regulations established pursuant to section 3173, shall set forth conditions of eligibility for assistance under this chapter. Such conditions shall provide that aid may be granted only to any applicant who: . . . Is not an inmate of any public institution, except as a patient in a medical institution, but an inmate of such an institution may file application for aid and any allowance made thereon shall take effect and be paid upon his ceasing to be an inmate of such institution."

2. The real thrust of your question No. 2 goes beyond the actual text, as you have advised me by telephone. Your inquiry is intended to go beyond the question as to whether the superintendent of Pineland Center has the authority to consent to the disclosure of information and reaches the question as to the authority of the superintendent of the Pineland Center to disclose information relative to a patient.

The consent question is quickly resolved by reference to 34 M.R.S.A. § 2256 as made operative as to the Pineland Center by 34 M.R.S.A. § 2159. We quote pertinently:

"All certificates, applications, records and reports made for the purpose of this chapter and directly or indirectly identifying a patient or former patient or an individual whose hospitalization has been sought under this chapter shall be kept confidential and shall not be disclosed by any person except insofar:

"1. Consent of individual. As the individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian, shall consent."

The consent authority is limited by statute to the persons above listed. We therefore answer, "No," to your question insofar as it asks whether the superintendent of the Pineland Center may consent to the disclosure of information.

The question as to the superintendent's authority to disclose information is resolved by reference to other provisions of 34 M.R.S.A. § 2256. Quoting further from § 2256, sub-sections 2 and 3, the superintendent may disclose information relative to a patient of the Pineland Center without the consent provided for in subsection 1 of that section when:

"2. Necessity. As disclosure may be necessary to carry out any of the provisions of this chapter, or

(Although § 2256 of Title 34 is within Chapter 191 of that title, it is made operative as to the Pineland Center through Title 34, § 2159, which latter section is within Chapter 187 of Title 34 entitled "Pineland Center;" therefore, we construe the phrase "this chapter" as set forth in sub-§ 2 of § 2256 to mean Chapter 187, "Pineland Center," for the purpose of applying the disclosure of information provisions to such institution. Such construction is necessary in order to give full effect to § 2159.)

"3. Court directive. As a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it or that failure to make such disclosure would be contrary to the public interests."

Exceptions to the restrictions on disclosure of information found in subsections 1 through 3 of section 2256 are provided in the same statute as follows:

"Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to his current medical condition to any members of the family of a patient or to his relatives or friends, nor the disclosure of any information concerning the patient to other hospitals, accredited social agencies or for purposes of research; nor the disclosure of biographical or medical information concerning the patient to commercial or governmental insurers, or any other corporation, association or agency from which the department may receive reimbursement for the care and treatment or support of the patient; nor the disclosure or use of any information, including recorded or transcribed diagnostic and therapeutic interviews, concerning any patient hospitalized under this chapter in connection with any educational or training program, established between a public hospital and any college, university, hospital, psychiatric or counselling clinic, or school of nursing, provided that in the disclosure or use of any such information as part of a course of instruction or training program the patient's identity shall remain undisclosed; nor shall this section affect the public-record status of the court docket, so called."

The superintendent of the Pineland Center under the above quoted provisions may disclose information respecting a resident of the Pineland Center without consent when the superintendent acts in accordance with 34 M.R.S.A. § 2256, sub-§ 2 or 3 or within the exceptions last quoted.

It should be noted that as of October 1, 1975, the following provisions will operate as to the disclosure of information and will supplant provisions above quoted:

"§1-A. Disclosure of information

"All orders of commitment, medical and administrative records, applications and reports and facts therein pertaining to any persons receiving services from the department, from any hospital pursuant to chapter 191, or from any facility licensed by the department pursuant to section 2052-A, shall be kept confidential and shall not be disclosed by any person except insofar:

"1. Consent of individual. As the individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian, having been given the opportunity to review the information sought to be disclosed shall consent;

"2. Necessity. As disclosure may be necessary to carry out any of the statutory functions of the department, or the hospitalization provisions of chapter 191, or

"3. Court directive. As may be subpoenaed by a court of record subject to any limitations contained within the privileged communication provisions of Title 32.

"As to persons receiving services pursuant to chapters 184-A, 184-B, and 187, nothing in this section shall preclude disclosure, upon proper inquiry, of information relating to the physical condition or mental status of an individual receiving such services to any members of his or her family, his or her relatives or friends, nor the disclosure of biographical or medical information concerning the individual to commercial or governmental insurers, or any other corporation, association or agency from which the department may receive reimbursement for the care and treatment, education, training or support of the individual; nor the disclosure or use of any information, including recorded or transcribed diagnostic and therapeutic interviews, concerning any individual receiving such services in connection with any educational or training program established between a public hospital and any college, university, hospital, psychiatric or counseling clinic or school of nursing, provided that in the disclosure or use of any such information as part of a course of instruction or training program, the patient's identity shall remain undisclosed.

"Any person willfully violating any provision of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

"This section shall not apply to the medical records and reports pertaining to persons receiving services from any private hospital pursuant to chapter 191."

34 M.R.S.A. § 1-A, as enacted by P.L. 1975, Chapter 495, § 2.

Courtland D. Perry
Assistant Attorney General

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