

MAINE STATE LEGISLATURE

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STATE OF MAINE

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Inter-Departmental Memorandum Date January 12, 1976

To William E. Schumacher, M.D.,
Director, Bureau of Mental Health

Dept. Mental Health & Corrections

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

Dept. Mental Health & Corrections

Subject Applicability of 34 M.R.S.A. §2105 to limited releases on convalescent status

SYLLABUS:

34 M.R.S.A. § 2105 applies only to institutional patients released on indefinite convalescent status and not to institutional patients released on convalescent status for limited periods.

FACTS:

The Augusta Mental Health Institute and Bangor Mental Health Institute conduct a practice of releasing certain patients on convalescent status for limited periods; e.g., two weeks or thirty days, in order to permit institutional monitoring of the patient's readiness for restoration to community living prior to absolute discharge from the institute.

QUESTION:

Is release on convalescent status for limited periods subject to the provisions of 34 M.R.S.A. §2105?

ANSWER:

No.

REASON:

34 M.R.S.A. § 2105, as enacted by Chapter 188 of the Public Laws of 1975 and amended by Chapter 623, Section 51-J of the Public Laws of 1975, reads as follows:

The chief administrative officer, or a person designated by him, of any state hospital or institution shall determine, prior to the placement of any patient on indefinite convalescence status who has been hospitalized as mentally ill or mentally retarded, whether the patient placed on indefinite convalescence status will be residing in a residential facility which is at least equivalent in the quality of the living conditions to the hospital or institution from which he is to be placed on indefinite convalescence status. Such a patient shall not be placed on indefinite convalescence status from any state hospital or institution if, according to the determination of the chief administrative officer or a person designated by him, the residential facility in which the patient will be residing is not at least equivalent in the quality of the living conditions to the hospital or institution from which he is to

be placed on indefinite convalescence status. For the purposes of this section, the phrase 'living conditions' shall include, but not be limited to, the physical conditions of the facility, the individual treatment plan provided for each patient and the programs for treatment available to and appropriate for each patient. The provisions of this section shall not apply to 'patients' as described in section 2290.

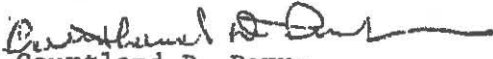
"For the purposes of this section, the Department of Mental Health and Corrections shall establish standards for assessing whether or not residential facilities are equivalent to the existing conditions in state hospitals or institutions.

"For the purposes of this section 'residential facilities' mean any boarding home, nursing home, foster home, group home or halfway house licensed by the Department of Health and Welfare or used by the Department of Mental Health and Corrections for placement of individuals."

The Legislature has made it abundantly clear by the language employed in Section 2105 that it intends that the provisions of the section be applied only to patients released on indefinite convalescence status. The word "indefinite" appears several times in the section and in every repetition is joined with "convalescence status." 34 M.R.S.A. § 2375, which relates to release on convalescence status from hospitals for the mentally ill is so written as to permit indefinite or definite convalescence status. 34 M.R.S.A. § 2154, which relates to conditional release from the Pineland Center, which, for the purposes of determining the applicability of 34 M.R.S.A. § 2105, we take to be synonymous with convalescence status, makes provision for both indefinite and definite release from the Pineland Center, providing support for the proposition that the Legislature has recognized a difference between indefinite and definite release or indefinite and definite convalescence status.

We find no requirement in 34 M.R.S.A. § 2105 that limited releases on convalescence status be subject to its provisions.

We need not go behind the clear language employed by the Legislature in § 2105 by advancement of our view relative to legislative intent; the language speaks for itself and is dispositive of the question.


Courtland D. Perry
Assistant Attorney General