

# MAINE STATE LEGISLATURE

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34 M.R.S.A. 1-B  
34 M.R.S.A. 1-C  
34 M.R.S.A. 2052-A

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TO: Garrell Mullaney, Superintendent  
Augusta Mental Health Institute

FROM: Richard F. Howard, Assistant Attorney General

DATE: 6 September 1978

SUBJECT: RELEASE OF INFORMATION BY COMMUNITY MENTAL HEALTH  
FACILITIES

Facts:

The Superintendent of the Augusta Mental Health Institute needs information from community mental health agencies regarding patients who have been referred and admitted to the institute.

Question:

Can information and reports regarding a patient gathered by a community mental health facility be provided to the Department of Mental Health and Corrections institution where the patient has been sent for treatment.

Answer:

Yes.

Reasoning:

The confidentiality of patient records of both Department's mental health facilities and community facilities licensed pursuant to 34 M.R.S.A. §2052-A is governed by 34 M.R.S.A. §1-B.

The statute, in somewhat different form, was extensively discussed in an earlier opinion of this office, which you have received, opinion from Courtland D. Perry to Roy Ettlinger, Superintendent, A.M.H.I., December 1, 1975. Although the opinion specifically addressed disclosure of patient record from the hospital to community mental health facilities, the reasoning applies equally well to transfer of information in the other direction.

One of the statutory exceptions to non-disclosure of patient records is if disclosure is:

"necessary to carry out the statutory functions of the department, or the hospitalization provisions of Chapter 191 . . ."

As discussed in the earlier opinion, the statutory design demonstrates a legislative recognition of mental health services as an integrated system involving inpatient as well as outpatient facilities. It also seems clear that the information in a patient's history and recent observations by a community facility's staff would be "necessary" for carrying out admission and care provision of Chapter 191, "Hospitalization of the Mentally Ill."

The 1976 Special Session of the Legislature enacted a new provision pertaining to access and transfer of information, 34 M.R.S.A. §1-C, Chapter 718, P.L. 1975. Subsection 2 requires that community mental health centers, licensed under §2052-A transmit patient records, upon request, to the Commissioner of Mental Health and Corrections pursuant to his "obligation to maintain the overall responsibility for the care and treatment

of the mentally ill." The new section provides that personally identifying material shall be deleted from these records and that this information may be used by the Commissioner for "administration, planning or research." We do not construe this section to limit the authority of community mental health facilities to also transmit identifiable patient care information to treatment facilities operated by the Department in order to assist in admission and provision of care for the patient.

There is nothing in the legislative history of Chapter 718 to suggest that §1-C is the exclusive method of disclosure by community facilities. In fact, the Statement of Fact of the original bill, L.D. 2222, indicates that the legislation was intended to "modify and extend" the procedure for disclosure of records. Furthermore, the new provision in §1-C(2) differs from the general authority for disclosure in §1-B, in that disclosure to the Commissioner for planning and administrative purposes is mandatory.

This analysis leads us to the conclusion that the Legislature intended that disclosure of coded information to the Commissioner of Mental Health and Corrections by licensed community mental health facilities be mandatory, but that this mandate did not affect the authorization of these facilities to also disclose identifiable patient records to the mental health institutes when necessary to accomplish hospitalization and to carry out statutory functions, including patient care.

I hope this response is helpful.

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Richard F. Howard  
Assistant Attorney General

RFH/vv