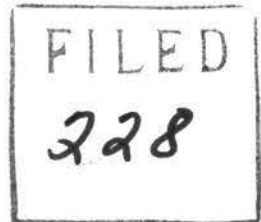


MENTAL HEALTH:                   The Division of Mental Health has the  
JUVENILES:                        authority and the duty to charge for  
MINORS:                            the care and treatment of a juvenile  
                                     committed to the Division of Mental  
Health by the juvenile court or transferred to the Division of  
Mental Health from the State Board of Training Schools pursuant  
to Section 211.201, RSMo, if such person is determined to be a  
private patient pursuant to the provisions of Section 202.863,  
RSMo.

OPINION NO. 228

June 28, 1973



Harold P. Robb, M.D., Director  
Division of Mental Health  
722 Jefferson Street  
Jefferson City, Missouri 65101

Dear Dr. Robb:

This opinion is in response to your request in which you ask whether the Division of Mental Health has authority to charge for the care and treatment of a patient committed by a juvenile court where the patient is committed directly to the Division of Mental Health or where the patient is committed first to the State Board of Training Schools and then transferred to the Division of Mental Health.

Section 211.201, RSMo provides the authority by which juvenile court commitments are made directly to the Division of Mental Health and also the authority by which a child is transferred from the State Board of Training Schools to the Division of Mental Health. That section provides in full as follows:

"1. When a child coming under the jurisdiction of the juvenile court is found by the court to be epileptic, mentally deficient or otherwise mentally disordered, the juvenile court may commit the child to the division of mental diseases for care and treatment in a state school and hospital or in a state mental hospital and the order of commitment is binding upon the division. If the child, after proper observation, examination and diagnosis is found by the division of mental diseases not to be epileptic,

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mentally deficient or mentally disordered so as to require care and treatment by the division of mental diseases, and if the juvenile court in its order committing the child to the division of mental diseases retains jurisdiction by the terms of its order of commitment, then the director of the division of mental diseases may make application, accompanied by a diagnosis and report, to the court which committed the child for an order relieving the division of custody of the child. If the committing court does not make an order relieving the division of mental diseases of custody of the child within twenty days after the receipt of the application, the jurisdiction of the committing court over the child terminates and the division of mental diseases is authorized to discharge the child from its custody or make such disposition as it deems necessary to promote the best welfare of the child.

"2. Whenever a child is committed to the state board of training schools and subsequently is found to be epileptic, mentally deficient or otherwise mentally disordered, the state board of training schools may order the transfer of the child to the division of mental diseases for care and treatment in an institution or hospital within the division subject to the jurisdiction of the board. The division shall without delay, accept the child for care and treatment for so long a period as is deemed necessary except that

"(1) if upon proper observation, examination and diagnosis by the medical staff of the institution to which he has been transferred, the child is found not to be epileptic, mentally deficient or mentally disturbed so as to require care and treatment in the institution or hospital, the director of the division of mental diseases shall so notify the state board of training schools and the child shall be returned to the custody of the state board of training schools;

"(2) when a child for any reason ceases to come under the jurisdiction of the state board of training schools, he may be retained

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in the institution or hospital only after proper proceedings have been instituted and held as otherwise provided by law."

Further, Section 202.595, RSMo also provides that mentally retarded persons may be admitted to the Division of Mental Health on court order as provided in Section 211.201, RSMo.

Clearly, there is no question that the juvenile courts have authority to commit mentally retarded and mentally ill children within their jurisdiction to the Division of Mental Health.

Under Section 202.863, RSMo, the superintendents of the facilities of the Division of Mental Health are given authority to determine whether a person admitted to such a state facility is to be classified as a "private, state or county" patient.

Under Section 202.330, RSMo, the director of the Division of Mental Health is given authority to establish rates to be charged for private patients.

Further, Section 202.265, RSMo provides that the Division of Mental Health has the authority to recover appropriations used for the support or treatment or other services rendered to patients of any of the facilities of the division from any person who is bound to provide for the support and maintenance of such person.

Therefore, in answer to your first question, with respect to charges for persons committed directly to the Division of Mental Health by the juvenile court, it is clearly our view that the Division of Mental Health has the authority as well as the duty to make such charges in all instances where the person admitted to the institution is not indigent or the person or persons responsible for the care of such person are not indigent.

In answer to your second question, we see no reason why children transferred to the Division of Mental Health from the State Board of Training Schools under subsection 2 of Section 211.201 should be treated any differently than any other patients with respect to charges for care and treatment. In such a situation the statutes that we have cited and quoted above and the general laws with respect to parental responsibility still apply.

It should be borne in mind that the facilities of the Division of Mental Health exist essentially to provide care and treatment for such persons. They are by no means penal facilities. Thus the benefit is for the individual and not solely for the public. See Department of Mental Health v. Pauling,

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265 N.E.2d 159 (Ill.Sup. 1970); Schneider v. Department of Mental Health, 277 N.E.2d 870 (Ill.Sup. 1971); State v. Koslerek, 259 A.2d 151 (Conn.App.Div. 1969).

Finally, it should be clear that the mere fact that a commitment or transfer is involuntary does not relieve the patient having the means, the persons responsible for the care of such patient, or the estate of such patient, from the responsibility of paying the charges as determined by the director in accordance with the provisions of Section 202.330, RSMo.


In reaching our conclusions we recognize that Section 211.241, RSMo provides that the juvenile court may make determinations generally with respect to the support of children under its jurisdiction and has the authority to order execution to issue, if necessary, to enforce such orders, or may approve payment of county funds for the support of a child depending upon ability to pay for such support. Section 211.241 is a general statute, however, in that it applies to support of children committed to various institutions, agencies and persons as contrasted with the sections which we have cited and quoted which apply specifically to the payment of charges for persons committed to the Division of Mental Health. Therefore, to the extent of any conflict, the mental health statutes govern with respect to the determination of the amount of payment and the liability for care and treatment. Cf., State v. Siecke, 472 S.W.2d 367 (Mo. banc 1971).

#### CONCLUSION

It is the opinion of this office that the Division of Mental Health has the authority and the duty to charge for the care and treatment of a juvenile committed to the Division of Mental Health by the juvenile court or transferred to the Division of Mental Health from the State Board of Training Schools pursuant to Section 211.201, RSMo, if such person is determined to be a private patient pursuant to the provisions of Section 202.863, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN C. DANFORTH  
Attorney General