

**Opinion No. 57****Aged—Direct Commitment By District Court—Transferees From State  
Hospital to Home—Priority**

**Held:** A district court may directly commit senile persons to the home for the aged without regard to the availability of accommodations and without regard to a waiting list of transferees from the state hospital.

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June 18, 1958

Mr. G. L. Bryant  
Executive Clerk  
State Board of Examiners  
Capitol Building  
Helena, Montana

Dear Mr. Bryant:

You have requested my opinion whether the district court can directly commit a senile person to the home for the aged if the home

is filled and the state hospital has a waiting list of senile persons to be transferred to the home.

Section 38-1103, RCM, 1947, provides in part:

"A senile person may be committed to the superintendent and detained at the home upon an order made by the district court of the county in which such person resides or in which he may otherwise be present . . . If the court shall determine that the patient is a senile person in need of care and treatment at the home, he shall be committed thereto, otherwise the application shall be dismissed . . ."

Section 38-1102, RCM, 1947, provides for voluntary admission and states in part:

"Any senile person desiring to receive treatment at the home may be admitted upon his own application to the superintendent, if accommodations are available at the home, in such manner and upon such conditions as the state board of examiners of the state of Montana may determine . . ."

Section 38-1108, RCM, 1947, authorizes the superintendent of the state hospital to examine patients at that institution to determine whether they can be transferred to the home for the aged. If found to be senile, the state board of examiners are authorized to order their transfer from the state hospital to the home.

The statute authorizing direct commitment by the district court does not require the court to ascertain whether the home has accommodations for the person committed. Thus the statute permits the court to order the commitment without regard to the available facilities and without regard to the fact that there is a waiting list of patients to be transferred from the state hospital to the home.

Section 38-1101, RCM, 1947, provides that no person afflicted with insanity may be committed to the home unless he is also senile. The home is primarily for the aged and the senile-insane awaiting transfer to the home do not have precedence over the aged directly committed by a district court.

Therefore, it is my opinion that a district court may directly commit senile persons to the home for the aged without regard to the availability of accommodations and without regard to a waiting list of transferees from the state hospital.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General