

MENTAL HEALTH - Duty to inform detainee subject to involuntary commitment petition of rights;
MENTAL HEALTH - State-controlled funding for regional mental health centers;
PEACE OFFICERS - Duty to inform detainee subject to involuntary commitment petition of rights;
MONTANA CODE ANNOTATED - Sections 53-21-106, 53-21-114, 53-21-115, 53-21-129, 53-21-202 to 53-21-204, 53-21-206;
ADMINISTRATIVE RULES OF MONTANA - Sections 20.14.501 to 20.14.512;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 5 (1989).

- HELD: 1. The Department of Institutions may allocate state general fund appropriations to purchase services for certain priority populations from regional mental health centers.
2. Pursuant to section 53-21-114, MCA, the mental health professional examining a person under a petition for involuntary commitment must determine whether the person has been informed of his rights and, if not, inform him of them.

July 11, 1990

Lee R. Kerr
Treasure County Attorney
P.O. Box 72
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Dear Mr. Kerr:

You have requested my opinion on the following questions:

1. May the Department of Institutions allocate state general fund appropriations for mental health centers to certain priority populations based on age, diagnosis, and severity of disorder considering section 53-21-206, MCA, which provides that mental health services are available without discrimination on the basis of race, color, creed, religion or ability to pay and shall comply with Title VI of the Civil Rights Act of 1964?
2. Pursuant to section 53-21-114, MCA, must the mental health professional examining a person under a petition for involuntary commitment inform that person of his rights?

The Department of Institutions has broad responsibility for the administration of the state mental health program and mental health centers. The duties of the Department require it to:

(2) initiate preventive mental health activities of the statewide mental health programs, including but not limited to the implementation of mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. Such means shall be utilized to initiate and operate these services in cooperation with local agencies as established under this part[;]

(3) make scientific and medical research investigations relative to the incidence, cause, prevention, treatment, and care of the mentally ill;

....

(5) prepare and maintain a comprehensive plan for the development of public mental health services in the state. The public mental health services shall include but not be limited to community comprehensive mental health centers, mental health clinics, traveling service units, and consultative and educational services[;]

(6) provide by regulations for the examination of persons who apply for examination or who are admitted either as inpatients or outpatients to the Montana state hospital or other public mental health facilities;

(7) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state[.]

§ 53-21-202, MCA. The State is divided into mental health regions and each region is authorized to incorporate as a nonprofit community mental health center. § 53-21-204, MCA. The Department and each center are authorized by sections 53-21-203 and 53-21-204(2), MCA, to enter into contracts in order to carry out the Department's plan for prevention, diagnosis and treatment of mental illness.

Information gathered from the Department of Institutions indicates there are five regional mental health centers in the state. Funds disbursed by the Department to the centers include state general fund appropriations and federal grants. After targeting some of these funds for certain essential services, the Department utilizes a formula for dividing the majority of the funds among the regional centers. The formula is based on an estimate of the

number of seriously mentally ill adults, the number of emotionally disturbed children identified by public schools, the number of service units provided to children and adolescents, and the number of admissions to Montana State Hospital. Each center "bills" the Department for services rendered and is reimbursed by the Department for the services provided to patients. The Department provides approximately 42 percent of the funding for the centers. The remainder of the centers' funding is provided by patient fees (17 percent), Medicaid, Medicare and state medical benefits (25 percent), other agencies (5 percent), counties (7 percent), and other miscellaneous sources (4 percent). The Department contracts with the centers for services it will purchase and the centers use the remainder of their funds as they see fit.

Your first question is whether this allocation of funds controlled by the Department constitutes discrimination in violation of section 53-21-206, MCA. That section and the federal law it cites require that the services of the Department and the centers be available without discrimination on the basis of race, color, creed, religion or ability to pay. Based upon the documents which you submitted with your opinion request and which describe the Department's formula for allocating funds, it appears that the Department's procedures for allocating funds to the centers do not relate in any way to a patient's race, color, creed, religion or ability to pay. The procedures do not, in fact, determine a person's eligibility for mental health services. The Department, which has the statutory duty to develop a comprehensive plan for the development of public mental health services in the state, merely contracts to "spend" state-controlled funds in a manner calculated to promote services for those individuals the Department has determined are in greatest need of those services. The centers may utilize resources obtained from other sources as they choose, and no showing has been made that any class of persons is being denied services. I therefore conclude, based upon the information submitted to me, that the Department's use of funds it controls is not a violation of section 53-21-206, MCA.

Your second question concerns application of section 53-21-114, MCA, which states in part:

- (1) Whenever a person is involuntarily detained or is examined pursuant to 53-21-121 through 53-21-126, the person shall at the time of detention or examination be informed of his constitutional rights and his rights under this part. Within 3 days of such detention or examination, he must also be informed in writing by the county attorney of such rights.

You suggest that mental health professionals should not be required to so inform a person, and suggest that the statute be interpreted to require peace officers to inform the detainee of his rights when involuntarily detained and remove the burden from the mental health professional. The statute is silent regarding who must inform. However, the statutes contemplate much more

training, knowledge and involvement concerning the mental health statutes and the commitment process by the mental health professional than by a peace officer. In In the Matter of the Mental Health of E.P., 47 St. Rptr. 297, ___ P.2d ___ (1990), the Court admonished the Mental Health Center, the county attorney, and the Department of Family Services for failure to comply with the statutory due process rights of the patient. The peripheral involvement of the peace officer who took E.P. into custody and promptly delivered E.P. to the center ended when she was delivered to the professional person. 47 St. Rptr. at 301. See also In re M.C., 43 St. Rptr. 508, 512, 716 P.2d 203, 206-07 (1986) (section 53-21-129, MCA, concerning emergency detentions, merely permits a peace officer to take a person into custody for an evaluation; it does not give the officer authority to decide whether the person should be placed in emergency detention. The professional person makes that determination). 43 Op. Att'y Gen. No. 5 (1989).

In order to be certified as a "professional person" under the mental health laws, the mental health professional must demonstrate proficiency and knowledge of the mental health laws. § 53-21-106, MCA; §§ 20.14.501 to 20.14.512, ARM. Section 53-21-115, MCA, of the mental health laws sets forth the procedural rights of a person detained or examined pursuant to a petition for involuntary commitment. Thus, a certified professional person has access to and knowledge of a detainee's rights and the law requiring notice of those rights. I therefore conclude that the professional person must determine whether a person has been informed of his rights and if he has not been so informed, to inform the person of them.

THEREFORE, IT IS MY OPINION:

1. The Department of Institutions may allocate state general fund appropriations to purchase services for certain priority populations from regional mental health centers.
2. Pursuant to section 53-21-114, MCA, the mental health professional examining a person under a petition for involuntary commitment must determine whether the person has been informed of his rights and, if not, inform him of them.

Sincerely,

MARC RACICOT
Attorney General