

## **Opinion No. 61-133**

December 21, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

**TO:** Dr. Stanley J. Leland Director, New Mexico Department of Public Health, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

Does the statutory procedure for temporary emergency hospitalization of mentally ill persons at a hospital specifically approved for such care and custody by the State Department of Public Health authorize the Department to approve out-of-state hospital facilities for such care and custody?

#### CONCLUSION

No.

### **OPINION**

#### ANALYSIS

The statutory enactments dealing generally with hospitalization of the mentally ill are Sections 34-2-1 through 34-2-25, N.M.S.A., 1953 Comp., and pocket supplements.

Section 34-2-13, N.M.S.A., 1953 Comp. (PS), sets forth the public policy of this State in regard to hospitalization of the mentally ill. It states that every such patient shall be entitled to humane care and that insofar as possible treatment shall meet the highest medical standards. This Section goes on to say that,

"Development of local facilities should proceed as is reasonably practical, having due regard for differing conditions in local communities and hospitals."

Section 34-2-18, N.M.S.A., 1953 Comp. (PS), provides that the superintendent or admitting physician of a hospital may admit any individual upon sworn application by a proper party and certification by a license physician that in his opinion the person is mentally ill. When such procedural requirements have been met, any health or law enforcement officer is authorized "to take the individual into custody and transport him immediately to the nearest hospital that has the approval of the state department of public health as a suitable facility for the custody and care of such patients and which will admit the individual." This Section further provides that "a patient so admitted shall

have the right to communicate with his legal guardian, spouse, a relative or any attorney at law at any reasonable time." This Section imposes a duty on the superintendent or admitting physician of the hospital "to notify immediately the individual's legal guardian, spouse or nearest relative, if known, other than the signer of the application, of the condition and whereabouts of the individual concerned."

Section 34-2-18, supra, goes on to set forth other provisions designed to safeguard the civil and medical rights of the person committed, including a provision for release. This Section concludes with the provision that "all persons, certificates, applications, records and reports involved in emergency hospitalization under this section are subject to all applicable provisions of Sections 34-2-1 through 34-2-25, New Mexico Statutes Annotated, 1953 Compilation."

Section 34-2-25, N.M.S.A., 1953 Comp. (PS), provides penalties for the unwarranted hospitalization or detention of any person under the statutory procedures.

Section 34-2-16, N.M.S.A., 1953 Comp., permits a person detained and hospitalized under the procedures above-mentioned to apply for a writ of habeas corpus to any court "in the county in which he is detained."

The Legislature's statement of public policy set forth in Section 34-2-13, supra, taken in conjunction with the many enumerated statutory safeguards for protection of the individual which are incorporated into the act dealing with hospitalization of the mentally ill, establish to our satisfaction that the Legislature intended the word "hospital" as used in Section 34-2-18, supra, to be a hospital located within the confines of this State. Any other interpretation would result in serious practical and jurisdictional problems since the general rule is that statutes are not construed as having any extra-territorial effect. 50 Am. Jur. § 487.