

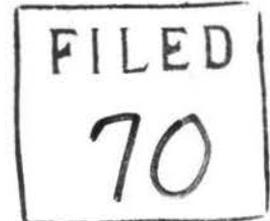
DEPARTMENT OF MENTAL HEALTH:  
HANDICAPPED CHILDREN:

The Department of Mental Health  
does not have the authority to  
place patients out of the State.

OPINION NO. 70

August 27, 1979

Beverley Wilson, M.D.  
Acting Director  
Department of Mental Health  
2002 Missouri Boulevard  
Jefferson City, Missouri 65101



Dear Dr. Wilson:

This official opinion is issued in response to your  
request for rulings on the following questions:

"1. Does the Department of Mental Health  
have the authority to place patients out  
of the state?

"2. Is the Department of Mental Health  
responsible for the costs of placing and  
maintaining a handicapped or severely  
handicapped child in another state if  
the placement is necessary for the  
child to receive an appropriate education?

"3. May a school district, special school  
district, or the department of elementary  
and secondary education be required to pay  
towards the cost of the maintenance and  
placement where necessary and appropriate  
out of the state?"

As to your first question, we find that heads of state  
mental health and mental retardation facilities may place  
patients in family homes or licensed facilities if they  
believe the placements to be appropriate and in the best  
interest of the patients. Section 202.185 provides as follows  
in pertinent part:

"1. The head of a mental health facility  
operated by the department of mental health  
may place any patient, whether voluntary  
or involuntary, in a licensed boardinghouse,

licensed nursing home or family home, upon such terms and conditions as he deems appropriate when he believes that such placement would be appropriate and in the best interest of the patient. . . ."

Likewise, under §202.193, RSMo, 1978, the heads of mental retardation facilities may place mentally retarded patients in licensed nursing homes, licensed or certified mental retardation facilities, or family homes if they consider the placements to be in the best interest of the patients and meet certain other statutory requisites.

Neither sections 202.185 nor 202.195, give the heads of state mental health and retardation facilities specific authority to place patients out of the state. The only provisions in Chapter 202 which pertain to services being offered in other states is the interstate compact on mental health.

Under the interstate compact on mental health, §202.880, Art. III(b), RSMo 1978, patients in Missouri may be transferred to institutions in other party states based upon clinical determinations that the care and treatment of the patients would be improved by the transfers because of such factors as the location of the patients' families and the character of the patients' illnesses. Before such transfers can be made, the receiving states have to agree to accept the patient under Art. III(c). Furthermore, a person may be a patient of only one institution at a time under the compact; therefore, the patient becomes a patient of the institution in the receiving state. Section 202.880 Art. VII(a). Thus, the Department of Mental Health would not continue to have an obligation to provide care and treatment after the patient is transferred under the compact.

Other than the transfer of a patient under the interstate compact, we do not find any authority for a placement or a transfer of a Department of Mental Health patient to or in another state.

As to your second question, it follows that if the Department does not have the authority to place patients out of the State, that the Department is not responsible for the costs of placing and maintaining a handicapped or severely handicapped child in another state if the placement is necessary for the child to receive an appropriate education.

Because the third question assumes that the Department has the authority or the responsibility to place a handicapped or severely handicapped child in another state if

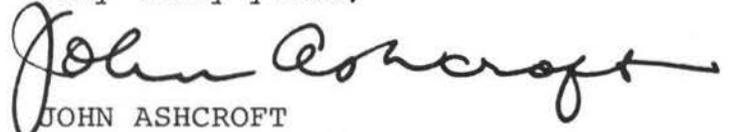
necessary for the child to receive an appropriate education, we are not responding to it because the Department does not have the legal authority or responsibility to make such placements.

CONCLUSION

It is the opinion of this office that the Department of Mental Health does not have the authority to place patients out of the State.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Reginald H. Turnbull.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Ashcroft", written in a cursive style.

JOHN ASHCROFT  
Attorney General