

CHAPTER 55

AN ACT concerning payment for patients in psychiatric facilities and revising parts of statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.1987, c.116 (C.30:4-27.2) is amended to read as follows:

C.30:4-27.2 Definitions.

2. As used in this act:
 - a. "Chief executive officer" means the person who is the chief administrative officer of an institution or psychiatric facility.
 - b. "Clinical certificate" means a form prepared by the division and approved by the Administrative Office of the Courts, that is completed by the psychiatrist or other physician who has examined the person who is subject to commitment within three days of presenting the person for admission to a facility for treatment, and which states that the person is in need of involuntary commitment. The form shall also state the specific facts upon which the examining physician has based his conclusion and shall be certified in accordance with the Rules of the Court. A clinical certificate may not be executed by a person who is a relative by blood or marriage to the person who is being screened.
 - c. "Clinical director" means the person who is designated by the director or chief executive officer to organize and supervise the clinical services provided in a screening service, short-term care or psychiatric facility. The clinical director shall be a psychiatrist, however, those persons currently serving in the capacity will not be affected by this provision. This provision shall not alter any current civil service laws designating the qualifications of such position.
 - d. "Commissioner" means the Commissioner of Human Services.
 - e. "County counsel" means the chief legal officer or advisor of the governing body of a county.
 - f. "Court" means the Superior Court or a municipal court.
 - g. "Custody" means the right and responsibility to ensure the provision of care and supervision.
 - h. "Dangerous to self" means that by reason of mental illness the person has threatened or attempted suicide or serious bodily harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical debilitation or death will result within the reasonably foreseeable future; however, no person shall be deemed to be unable to satisfy his need for nourishment, essential medical care or shelter if he is able to satisfy such needs with the supervision and assistance of others who are willing and available.
 - i. "Dangerous to others or property" means that by reason of mental illness there is a substantial likelihood that the person will inflict serious bodily harm upon another person or cause serious property damage within the reasonably foreseeable future. This determination shall take into account a person's history, recent behavior and any recent act or threat.
 - j. "Department" means the Department of Human Services.
 - k. "Director" means the chief administrative officer of a screening service, a short-term care facility or a special psychiatric hospital.
 - l. "Division" means the Division of Mental Health Services in the Department of Human Services.
 - m. "In need of involuntary commitment" means that an adult with mental illness, whose mental illness causes the person to be dangerous to self or dangerous to others or property and who is unwilling to be admitted to a facility voluntarily for care, and who needs care at a short-term care, psychiatric facility or special psychiatric hospital because other services are not appropriate or available to meet the person's mental health care needs.
 - n. "Institution" means any State or county facility providing inpatient care, supervision and treatment for persons with developmental disabilities; except that with respect to the maintenance provisions of Title 30 of the Revised Statutes, institution also means any psychiatric facility for the treatment of persons with mental illness.
 - o. "Mental health agency or facility" means a legal entity which receives funds from the State, county or federal government to provide mental health services.

p. "Mental health screener" means a psychiatrist, psychologist, social worker, registered professional nurse or other individual trained to do outreach only for the purposes of psychological assessment who is employed by a screening service and possesses the license, academic training or experience, as required by the commissioner pursuant to regulation; except that a psychiatrist and a State licensed clinical psychologist who meet the requirements for mental health screener shall not have to comply with any additional requirements adopted by the commissioner.

q. "Mental hospital" means, for the purposes of the payment and maintenance provisions of Title 30 of the Revised Statutes, a psychiatric facility.

r. "Mental illness" means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability unless it results in the severity of impairment described herein. The term mental illness is not limited to "psychosis" or "active psychosis," but shall include all conditions that result in the severity of impairment described herein.

s. "Patient" means a person over the age of 18 who has been admitted to, but not discharged from a short-term care or psychiatric facility.

t. "Physician" means a person who is licensed to practice medicine in any one of the United States or its territories, or the District of Columbia.

u. "Psychiatric facility" means a State psychiatric hospital listed in R.S.30:1-7, a county psychiatric hospital, or a psychiatric unit of a county hospital.

v. "Psychiatrist" means a physician who has completed the training requirements of the American Board of Psychiatry and Neurology.

w. "Psychiatric unit of a general hospital" means an inpatient unit of a general hospital that restricts its services to the care and treatment of persons with mental illness who are admitted on a voluntary basis.

x. "Psychologist" means a person who is licensed as a psychologist by the New Jersey Board of Psychological Examiners.

y. "Screening certificate" means a clinical certificate executed by a psychiatrist or other physician affiliated with a screening service.

z. "Screening service" means a public or private ambulatory care service designated by the commissioner, which provides mental health services including assessment, emergency and referral services to persons with mental illness in a specified geographic area.

aa. "Screening outreach visit" means an evaluation provided by a mental health screener wherever the person may be when clinically relevant information indicates the person may need involuntary commitment and is unable or unwilling to come to a screening service.

bb. "Short-term care facility" means an inpatient, community based mental health treatment facility which provides acute care and assessment services to a person with mental illness whose mental illness causes the person to be dangerous to self or dangerous to others or property. A short-term care facility is so designated by the commissioner and is authorized by the commissioner to serve persons from a specified geographic area. A short-term care facility may be a part of a general hospital or other appropriate health care facility and shall meet certificate of need requirements and shall be licensed and inspected by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) and in accordance with standards developed jointly with the Commissioner of Human Services.

cc. "Special psychiatric hospital" means a public or private hospital licensed by the Department of Health and Senior Services to provide voluntary and involuntary mental health services, including assessment, care, supervision, treatment and rehabilitation services to persons with mental illness.

dd. "Treatment team" means one or more persons, including at least one psychiatrist or physician, and may include a psychologist, social worker, nurse and other appropriate services providers. A treatment team provides mental health services to a patient of a screening service, short-term care or psychiatric facility.

ee. "Voluntary admission" means that adult with mental illness, whose mental illness causes

the person to be dangerous to self or dangerous to others or property and is willing to be admitted to a facility voluntarily for care, needs care at a short-term care or psychiatric facility because other facilities or services are not appropriate or available to meet the person's mental health needs. A person may also be voluntarily admitted to a psychiatric facility if his mental illness presents a substantial likelihood of rapid deterioration in functioning in the near future, there are no appropriate community alternatives available and the psychiatric facility can admit the person and remain within its rated capacity.

ff. "County adjuster" means the person appointed pursuant to R.S.30:4-34.

2. R.S.30:4-34 is amended to read as follows:

County adjuster for commitment of persons with mental illness.

30:4-34. In each county where county counsel, county solicitor, county clerk, county physician or county probation officer, or any of their assistants is in charge and supervision of the preparation of papers relating to the commitment of persons with mental illness, such person shall be known as "county adjuster" and such duties shall, except as otherwise provided in section 2 of P.L.1981, c.403 (C.30:4-34.1), continue to pertain to the office of such county counsel, county solicitor, county clerk, county physician or county probation officer or their successors in office, but, notwithstanding the foregoing, in case any other county official or employee shall be at the time of the adoption of this act, in charge and supervision of the preparation of papers relating to the commitment of persons with mental illness, the governing body of the county may designate that county official or employee as county adjuster. In all other counties the county governing body shall designate some county official or employee as county adjuster.

The county adjuster shall have charge and supervision of the preparation of papers relating to the commitment of persons with mental illness in such county, and in cases arising in other counties in which the legal settlement appears to be in his county. Classification under civil service rules shall not be affected by reason of such designation or additional duties, and additional compensation, if any, for such services may be fixed by the county governing body and paid in the same manner as other county employees are paid. Each county governing body shall notify the various institutions for persons with mental illness of the name and address of the county adjuster.

The judge of the Superior Court within the county may appoint the county adjuster to act as referee for the purpose of taking testimony bearing solely on the question of legal settlement and the financial ability of the person with mental illness or the parent of the person with mental illness, if the person is under the age of 18, to pay the cost of maintenance, in accordance with the provisions of R.S.30:4-60, and shall make return to the court of his findings, conclusions and recommendations. Such findings, conclusions and recommendations shall be subject to the approval of the court and shall not be effective until incorporated in an appropriate order or judgment of the court. The county adjuster, acting as such referee, may subpoena witnesses and compel their attendance on forms approved by the court.

3. R.S.30:4-56 is amended to read as follows:

Judgment of commitment; expense; filing fee.

30:4-56. The final judgment of commitment shall contain a determination of the legal settlement of the person with mental illness and shall provide for the payment of the expense of the care and treatment of the person. The judgment, together with the complaint or a certified copy thereof, shall be filed in the office of the clerk of the county, who shall forward within 10 days after receipt of same a certified copy of the judgment, and in all cases a certified copy of the complaint on which the judgment is founded, to the chief executive officer of the institution to which the person is committed.

In the case of a person with mental illness against whom a final judgment of commitment has been entered, the county adjuster shall, within a reasonable period of time after the person is discharged from a psychiatric facility, provide the person or the person's parent, if the person is

under the age of 18, with notice of the amount required to be paid by the terms of the court order.

At the time of making the final judgment, the court shall further tax a filing fee of \$1.00 to be paid to the clerk for the use of the county in each case, which fee shall be paid in all nonindigent cases by the person made chargeable in the judgment, and in all indigent cases by the county in which the action is had unless the indigent person is chargeable to another county in which case such other county shall be liable for the fee.

4. R.S.30:4-60 is amended to read as follows:

Payments, determination of amount, liability therefor.

30:4-60. a. If the court shall determine that the person has a mental illness and is in need of treatment at a psychiatric facility, it may determine the legal settlement of the person and, consistent with the laws governing civil commitment and the Rules of Court, direct the admission or hospitalization of the person to the care of the Commissioner of Human Services for treatment in a psychiatric facility, short-term care facility or special psychiatric hospital in this State.

b. If the Department of Human Services determines that the person has a developmental disability and is eligible for functional services from the Division of Developmental Disabilities, the department, using a formula of financial ability to pay as promulgated annually by the Department of the Treasury, shall determine if the person with a developmental disability has sufficient income, assets, resources or estate to pay for his maintenance as fixed by the State Board of Human Services, or is able to make any payment towards his maintenance, or if the person's chargeable relatives or other persons chargeable by contract are able to pay the person's maintenance or make any payment toward the person's maintenance on the person's behalf. The department shall determine the legal settlement of the developmentally disabled person pursuant to section 86 of P.L.1965, c.59 (C.30:4-165.3).

The department shall send written notice of the periodic payment amount to the person or his parent or guardian, chargeable relative or other person chargeable by contract for the person's support. All required payments shall be made directly to the department unless otherwise specified in the notice. The notice may, in the discretion of the department, contain such direction as may seem proper concerning security to be given for the payment. The payment notice shall be separate and independent of any order of commitment to the care and custody of the commissioner or any order of guardianship.

The department shall annually review and revise, as appropriate, its payment calculations. If the financial circumstances of the person or persons chargeable by law or contract for the support of the developmentally disabled person change prior to the annual review, the chargeable person or persons shall immediately notify the department in writing.

c. (1) A person with mental illness who is 18 years of age or older and is being treated in a psychiatric facility as defined in section 2 of P.L.1987, c.116 (C.30:40-27.2) shall be liable for the full cost of his treatment, maintenance and all necessary and related expenses of the person's hospitalization until he is determined to be ineligible for or has exhausted any third party insurance benefits or medical assistance program that will pay an amount toward the facility's bill. The obligation by the person with mental illness for the remainder of the facility's bill, after the credit for all available third party insurance payments or medical assistance program payment, will be in an amount based upon the sliding scale fee schedule established for charity care pursuant to subsection b. of section 10 of P.L.1992, c.160 (C.26:2H-18.60).

(2) The obligation of the parent of a person with mental illness under the age of 18 for the remainder of the facility's bill shall be based upon the lesser of the sliding scale fee schedule established for charity care pursuant to subsection b. of section 10 of P.L.1992, c.160 (C.26:2H-18.60), or the formula of financial ability to pay as promulgated annually by the Department of the Treasury pursuant to subsection b. of this section.

(3) A person with mental illness or a person responsible under a court order for the cost of care and maintenance of a person with mental illness who, without good cause, (a) refuses to submit information and authorizations sufficient to enable the facility to access any

available third-party payer, or (b) refuses to apply for public medical assistance for which the person with mental illness may be eligible, shall be responsible for the full cost of the person's care and maintenance at the facility without the application of the criteria set forth in paragraphs (1) and (2) of this subsection.

(4) Based upon the criteria set forth in paragraphs (1) and (2) of this subsection, the Department of Human Services or county adjuster in the county of settlement, as applicable, shall make a determination of the amount the person with mental illness who is 18 years of age or older, or the parent of a person with mental illness under the age of 18, shall be liable to contribute toward the cost of the person's treatment, maintenance and all necessary and related expenses of the person's hospitalization. The liability may be enforced by the Commissioner of Human Services in the manner set forth in section 1 of P.L.1962, c.207 (C.30:4-75.1).

(5) In the case of a person with mental illness who is married, the department shall establish a spousal share of the combined assets of the couple that shall be preserved for the noninstitutionalized spouse and immune from execution to satisfy the person's liability to contribute toward the cost of treatment, maintenance and all necessary and related expenses of the person's hospitalization. In order to determine the spousal share of the combined assets to be preserved, the Commissioner of Human Services shall employ the same methodology used by the State Medicaid program to determine the resources that are preserved for the needs of the community spouse of an institutionalized individual in accordance with N.J.A.C.10:71-4.8.

(6) The Commissioner of Human Services shall act on any request by a person with mental illness who is 18 years of age or older, or the parent of a person with mental illness under the age of 18, to compromise for settlement of the obligation established pursuant to this section. With respect to the request, the commissioner shall allow the person or parent to retain adequate funds to:

- (a) maintain the person's or parent's housing and usual standard of living in the community;
- (b) provide for any necessary medical expenses or special needs;
- (c) support any minor, disabled, elderly or other dependent;
- (d) establish a trust to ensure future self-sufficiency; or
- (e) provide for any other genuine financial needs.

Requests to compromise for settlement of the obligation shall be liberally granted by the commissioner and shall promote the person's or his parent's opportunity to obtain and maintain employment, purchase property, both real and personal, and achieve full reintegration into the community, as applicable. The commissioner shall ensure that all persons and parents are notified of their right to request a compromise and the procedure for doing so.

5. R.S.30:4-63 is amended to read as follows:

Commitment of person with mental illness, payment.

30:4-63. a. The court may, after final hearing, commit any person with mental illness to any State or county psychiatric institution irrespective of the person's legal settlement where provision is made for his care and maintenance, in an amount approved by the State Board of Human Services or by the board of chosen freeholders, as the case may be. The person may remain as a full paying patient in such institution as long as such sum shall be regularly paid out of the estate of the person, or by the person or persons chargeable by law with his care and maintenance, or under contract. In the event that such sum cannot be paid because of a change in the financial circumstances of the person with mental illness or his legally responsible relatives then the court may make such order as may be necessary with regard to the manner and the amount of maintenance which shall be paid on behalf of the person with mental illness and by whom.

b. The Department of Human Services may admit a person found eligible for functional services from the Division of Developmental Disabilities to a residential functional services placement irrespective of the person's legal settlement if provision is made for the payment of the full cost of the person's care and maintenance, in an amount approved by the State Board of Human Services. The person may remain as a full paying person in the residential functional services placement, or in another residential functional services placement deemed appropriate

by the department, as long as the full per capita amount for the placement is regularly paid from the person's income, benefits, assets, resources or estate, or by the person chargeable by law or under contract with his care and maintenance.

6. R.S.30:4-66 is amended to read as follows:

Liability for support.

30:4-66. Every person supported in a State or county charitable institution or other residential functional service pursuant to section 13 of P.L.1965, c.59 (C.30:4-25.1) shall be personally liable for his maintenance and for all necessary expenses incurred by the institution or other residential functional service in his behalf and the father or mother of a child under 18 years of age, severally and respectively, being of sufficient ability, of every person so confined, whose estate is not sufficient for his support, shall support, and maintain the patient in the institution or other residential functional service, as the case may be, in such manner and to such an amount as the court shall direct pursuant to subsection c. of R.S.30:4-60 in the case of mentally ill patients, and in the case of developmentally disabled persons, as required pursuant to subsection b. of R.S.30:4-60. But no payment shall be ordered to be made by a chargeable relative 55 years of age or over except with respect to the maintenance of his or her natural or adopted child under the age of 18 years.

7. Section 1 of P.L.1938, c.239 (C.30:4-80.1) is amended to read as follows:

C.30:4-80.1 Lien against property of persons confined, receiving services.

1. Every institution or other residential service maintained in whole or in part by State or county funds, which provides inpatient care, supervision and treatment for persons with developmental disabilities, shall have a lien against the property of a person receiving functional services from that institution or service for the total cost of the care and maintenance of the person in the institution at the per capita cost rate of maintenance fixed in accordance with law. The lien shall also attach to the real and personal property of any person chargeable by law with the support and maintenance of the person and against whom a court of competent jurisdiction has entered an order directing the person to pay all or a part of the cost of maintaining the person in an institution, provided that the amount of the lien shall not exceed the amount of maintenance required to be paid by the order of court. The lien shall also attach to the real and personal property of any person chargeable by law with the support and maintenance of the person pursuant to subsection b. of R.S.30:4-60, but the amount of the lien shall not exceed the amount of maintenance to be paid. Liens under this section, when properly filed as set forth herein, shall have priority over all unrecorded encumbrances and shall be at the rate to be determined as provided in Title 30 of the Revised Statutes.

C.30:4-80.6a Liens, certain; extinguished.

8. All liens filed against a person treated at a psychiatric facility as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2), prior to the effective date of P.L.2005, c.55, are hereby extinguished and shall have no legal effect. No new liens shall be filed by a psychiatric facility on or after the effective date of P.L.2005, c.55, against a person treated at the facility.

9. Section 6 of P.L.1938, c. 239 (C. 30:4-80.6) is amended to read as follows:

C.30:4-80.6 Discharge of liens, certain.

6. a. Upon the request of a person treated at a psychiatric facility as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2), or that person's legally responsible relative, against whom a lien was recorded prior to the effective date of P.L.2005, c.55, the Department of Human Services shall arrange for the discharge of the lien by the clerk of the county, register of deeds and mortgages or clerk of the Superior Court, as the case may be. No fee shall be charged by the clerk of the county, register of deeds and mortgages or clerk of the Superior Court for the removal of a lien pursuant to this section.

b. To discharge any lien or liens filed hereunder, the chief executive officer of the institution claiming the lien or his duly constituted agent shall file with the clerk of the county, register of deeds and mortgages or clerk of the Superior Court, as the case may be, a duly acknowledged certificate setting forth the fact that the institution desires to discharge the lien of record.

c. In the case of any lien not covered by the provisions of subsection a. of this section, the Commissioner of Human Services is hereby authorized to compromise for settlement any lien filed under the provisions of this act for the maintenance of any patient. A memorandum of the compromise and settlement shall be entered in the records of the institution affected thereby and shall be sufficient authorization for a complete discharge of the lien.

C.30:4-60a Regulations concerning sliding scale fee and patient liability.

10. The Department of Human Services shall adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) concerning the establishment of a sliding scale fee schedule and determination of patient liability to contribute to the cost of care and maintenance pursuant to R.S.30:4-60.

11. This act shall take effect on the 180th day after enactment; except that the provisions of section 8 of this act shall take effect immediately. The Commissioner of Human Services may take such anticipatory administrative action in advance of the effective date as shall be necessary for the implementation of the act.

Approved March 24, 2005.