



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

May 1, 2023

Wendy D. Bailey, Executive Director
Mississippi Department of Mental Health
1101 Robert E. Lee Building
239 North Lamar Street
Jackson, Mississippi 39201

Re: Psychiatric Treatment for an Individual Committed for Substance Use
Disorder Treatment

Dear Director Bailey:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, Mississippi State Hospital in Whitfield and East Mississippi State Hospital in Meridian provide both psychiatric and substance use (alcohol and drug) disorder treatment to individuals who have been court-committed. Individuals are typically committed for either psychiatric treatment or substance use disorder treatment. Mississippi Code Annotated Sections 41-21-61 *et seq.* govern mental health commitments, and Sections 41-31-1 *et seq.* govern substance use disorder commitments.

Questions Presented

1. Does Section 41-31-11 authorize Mississippi State Hospital and East Mississippi State Hospital to transfer an individual court-committed for substance use disorder treatment to an inpatient acute psychiatric ward for treatment when the initial commitment order is for substance use disorder treatment?
2. Does the hospital need to discharge and seek a civil commitment order for mental health treatment in order to legally provide psychiatric treatment to an individual committed to Mississippi State Hospital or East Mississippi State Hospital for substance use disorder treatment?

Brief Response

1. No. Section 41-31-11 does not provide Mississippi State Hospital or East Mississippi State Hospital the authority to transfer an individual court-committed for substance use disorder treatment to an inpatient acute psychiatric ward for mental health treatment.
2. When an individual committed to Mississippi State Hospital or East Mississippi State Hospital for substance use disorder treatment is found to be suffering from a mental condition requiring commitment for psychiatric treatment, the hospital's medical director may bring commitment proceedings—in accordance with Sections 41-21-61 *et seq.*—for psychiatric treatment. Miss. Code Ann. § 41-31-19. In this scenario, there is no statutory requirement that an individual be discharged from his or her commitment for substance use disorder treatment prior to a medical director bringing mental health commitment proceedings.

Applicable Law and Discussion

This office has previously opined that there is no indication that the commitment proceedings for mental health under Sections 41-21-61 *et seq.* and for substance use disorder under Sections 41-30-1 *et seq.* are in any way interchangeable. MS AG Op., *Presley*, at *1, (Mar. 3, 1994). The Mississippi Supreme Court has also been clear in this regard, emphasizing that state hospitals are “not at liberty to second guess [a] chancery court” and that a chancellor’s commitment rulings are “entitled to the full force of law.” *C.W. v. Lamar County*, 250 So. 3d 1248, 1253 (Miss. 2018).

Section 41-31-11 allows for the transfer of an individual being treated for drug and alcohol abuse “from one institution used for the commitment of alcoholics and drug addicts to another institution, or from one department in any institution to another as is deemed necessary for their care and treatment.” The committing court must be provided with written notification and the details of the transfer, including the name of the new program or facility. *Id.*

The commitment processes under Sections 41-21-61 *et seq.* (mental health commitments) and Sections 41-31-1 *et seq.* (substance use disorder commitments) are different. For example, Section 41-21-67(2) requires that individuals being considered for mental health commitment undergo a physical and mental examination by “two (2) reputable, licensed physicians or one (1) reputable, licensed physician and either one (1) psychologist, nurse practitioner or physician assistant” But individuals being considered for substance use disorder commitment have no such requirement. *See* Miss. Code Ann. § 41-31-5(3) (“The said chancellor, in his discretion, may require that the alleged alcoholic or drug addict be examined by the county health officer or by such other competent physician or physicians as the chancellor may select”); *see also Bethany v. Stubbs*, 393 So. 2d 1351, 1353 (Miss. 1981) (discussing pre-commitment hearings for mental health treatment: “Due process is guaranteed under . . . Section 41-21-63 and Section 41-21-73 which require and provide for pre-commitment hearings before the chancery judge and for an attorney to represent the person during the hearing.”).

Moreover, Section 41-21-63(1), pertaining to mental health treatment, specifies that “[n]o person, other than persons charged with crime, shall be committed to a public treatment facility except

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under the provisions of Sections 41-21-61 through 41-21-107 or 43-21-611 or 43-21-315.” Along these same lines, Section 41-21-61(f) provides that “a person having only . . . brief periods of intoxication caused by alcohol or drugs [or] dependence upon or addiction to any alcohol or drugs” does not fit within the statutory definition of a “[p]erson with mental illness.” Accordingly, Section 41-31-11’s transfer language does not provide authority to transfer an individual court-committed for substance use disorder treatment to an inpatient acute psychiatric ward for mental health treatment.

Although the language in Section 41-31-11 does not authorize the transfer of an individual court-committed for substance use disorder treatment to an inpatient acute psychiatric ward for mental health treatment, we direct you to Section 41-31-19 pertaining to individuals committed for substance abuse disorder:

The medical director of the hospital may bring commitment proceedings under the provisions of the proper statute in the county wherein the person involved is restrained for commitment to such institution as shall be proper, if said person is found to be suffering from a mental or nervous condition or affliction requiring his adjudication and commitment under said statute.

This statute allows the medical director of Mississippi State Hospital or East Mississippi State Hospital to bring commitment proceedings in accordance with Sections 41-21-61 *et seq.* when an individual committed to the hospital for substance use disorder treatment is found to be suffering from a mental condition requiring commitment for psychiatric treatment. In this scenario, there is no statutory requirement that an individual be discharged from his or her commitment for substance use disorder treatment prior to a medical director bringing mental health commitment proceedings.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Maggie Kate Bobo*

Maggie Kate Bobo
Special Assistant Attorney General