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Article V Returns Under the Interstate Compact on Juveniles

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Nonetheless, a hospital's §501(c)(3) obligation might be raised as an affirmative defense to action for payment for emergency services rendered on the theory that an emergency room is "open" to poor people only if they know they will not be billed, sued, or threatened with suit by the hospital. And regardless of the applicability of the §501(c)(3) theory, attorneys should continue to raise indigent care obligations flowing from state or local tax exemptions as affirmative defenses and perhaps cross-complaints to collection actions brought by "charitable" nonprofit hospitals.

State Hill-Burton Work Group Model Materials Available

Unless low income consumers can determine whether or not they are eligible for free or below-cost services from facilities which have received Hill-Burton grants and loans, the "uncompensated services" obligation will remain unenforceable. To determine this, consumers must have access to clear and simple eligibility criteria which they can understand and apply to themselves. Under the regulation implementing the "uncompensated services" requirement of Title VI, 42 U.S.C. §291c(e)(2), the responsibility for establishing such criteria rests not with each individual facility but with the state Hill-Burton agency, which must include them in its State Plan, 42 C.F.R. §53.111(g). Most state agencies have ignored this requirement during the past three years.

The New Jersey Department of Health is one of the state agencies which had not developed specific eligibility criteria for "persons unable to pay." In October 1975, Legal Services attorneys from different areas in the state, a law professor, and an attorney from the State Department of the Public Advocate met to discuss strategies to promote compliance by grantee hospitals. Many of their clients were experiencing difficulty in getting access to hospital services due to inability to pay, and when people were admitted and treated, grantee hospitals persistently billed and instituted collection actions against them. Not only had the Department of Health failed to set eligibility standards, it had no meaningful compliance review and enforcement procedures. The decision was made to mount a statewide effort to improve the state plan provisions relating to "uncompensated services" and, in the process, prod the state agency into undertaking some enforcement activity.

In the 10 months since its formation, members of the Work Group have undertaken a wide range of Hill-Burton advocacy. They have filed state and federal administrative complaints concerning noncompliance by grantees, assisted low income groups and individuals in resolving grievances against individual grantees, and continued to defend vigorously collection actions instituted against their clients by grantee hospitals. In addition, they have pushed the Department of Health to promulgate adequate eligibility criteria. From the reams of correspondence which members of the Work Group have made available those letters and memos relevant to the eligibility issue have been selected to make up the *State Hill-Burton Work Group Model Materials*, Clearinghouse No. 19,054, which will be updated as appropriate.

The purpose of assembling and distributing these materials is twofold. First, they demonstrate the usefulness of

the Work Group mechanism for coordinating administrative advocacy and maximizing impact on a state Hill-Burton agency. (Obviously, such coordination is also quite useful in connection with judicial advocacy). Second, they contain some highly creative thinking on eligibility issues common to all jurisdictions from which other Hill-Burton advocates will benefit. In the interests of manageability materials relevant to community organizing around Hill-Burton, such as manuals and newspaper articles, have been omitted. (These are available from the Clearinghouse, No. 18,321 and 18,322). However, it should be clear that effective enforcement of the uncompensated services obligation can only occur if the beneficiaries of this entitlement are involved. In isolation from a community base, administrative advocacy, no less than litigation, is unlikely to yield compliance.

One final comment on the advisability of focussing on the state agency rather than the HEW Regional Office. Pub. L. No. 93-641, which recodified the "uncompensated services" obligation in Title XVI of the Public Health Service Act, does not diminish the importance of effective advocacy at the state level. Although Title XVI shifts the locus of monitoring and enforcement responsibility from the state to the federal level, 42 U.S.C. §§300o-1(6) and 300p-2(c), the pace of implementation has been so slow that no such shift is likely to occur in the near future. Indeed, the evidence available at this time suggests that when HEW does promulgate regulations under Title XVI, the state agencies will retain many of their current responsibilities, including the establishment of eligibility criteria. So for the time being, state Hill-Burton agencies, renamed by Pub. L. No. 93-641 as State Health Planning and Development Agencies, are still where the focus should be.

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Article V Returns Under the Interstate Compact on Juveniles

The Interstate Compact on Juveniles provides the means by which a juvenile escapee or absconder can be returned to his state of origin with only a minimum of difficulty. Article V of the compact, which covers this situation, provides that the person or authority from whose probation or parole supervision a delinquent youth has absconded or from whose institutional custody he has escaped can make a written request for his return to the appropriate court or executive authority of the state where the youth is allegedly located. Upon receipt of such a request, the court or executive authority to whom it is addressed shall issue an order that the youth be taken into custody and detained. After being detained, the child shall be taken before an appropriate judge who shall inform him of the demand made for his return, and who may appoint counsel or a guardian ad litem for him. If the request for return of the child is found to be in order by the judge, the child shall be delivered to the appropriate person

authorized to receive him on behalf of the demanding party. Normally requests are considered to be in order if they comply with the minimum procedural requirements outlined in Article V. These include a statement of the name and age of the child, the particulars of the child's adjudication as a delinquent, the circumstances of the breach of the terms of the child's probation or parole or of his escape from an institution, and the location, if known, of the child at the time the request is made. In addition, the request must be verified by affidavit, executed in duplicate, and be accompanied by two certified copies of the judgment, formal adjudication or order of commitment that subjected the delinquent juvenile to probation or parole or to the legal custody of an institution.

If the request is not found to be in order the court may refuse to authorize the requested return. Where the request, however, is in order courts have generally felt bound to honor it regardless of any mitigating circumstances that would augur to the contrary.

However, the Washington Court of Appeals recently reached a different conclusion. *In re Welfare of Wiles*, 547 P.2d 302(1976), available from the Clearinghouse, No. 18,172 A, B. There the court stated that:

the entire "extradition" procedure provided by the compact [was] subject to the caveat that "all remedies and procedures provided by this compact [should] be in addition to and not in substitution for other rights, remedies and procedures, and [should] not be in derogation of parental rights and responsibilities."

In support of this view, the court concluded that a trial judge has the discretion to go beyond a mere examination of the procedural regularity of a request for return to consider the question of whether a return would best serve the welfare of the child involved.

In July, the *Wiles* decision was followed by the Juvenile Court of Memphis and Shelby County, Tennessee. In June 1976, a juvenile absconded from an Illinois institution and was subsequently apprehended in Memphis for hitchhiking. An initial request for return made by Illinois authorities failed to comply with Article V procedural requirements and the juvenile was held in Tennessee pending compliance with them. On July 1, 1976, the juvenile court found a subsequent requisition to be in order and authorized the juvenile to be delivered to the officer or person appointed by the demanding authority for transportation back to Illinois. *In the Matter of D.C.*, No. 13318 (Tenn. Juv. Ct., Memphis and Shelby County, July 22, 1976), available from the Clearinghouse, No. 19,103 A - D. At that point the juvenile's Legal Services attorney petitioned the court to alter, amend or delay the execution of transfer to the Illinois authorities on the grounds that there had been no judicial proceeding to determine whether or not the transfer was in the best interest or welfare of the child. On July 16, 1976, the court modified its previous order and suspended enforcement pending further hearing on the law and facts.

Following that hearing, the court concluded, citing *In re Wiles* as authority, that Tennessee law required that the court consider not only procedural regularity, but also whether the requested return was in the best interests of the child. It further concluded that the facts of the case demonstrated that the

welfare of the juvenile would best be served by allowing her to remain in Tennessee.

While these two decisions stand alone in requiring a hearing on the issue of whether an Article V return would serve the welfare of the juvenile, other litigation in Indiana and Iowa is currently under contemplation that would seek the same result. Legal Services attorneys in other states who would be interested in challenging the current practices of their local courts may wish to contact the Juvenile Center for materials that outline the legal arguments and for suggestions concerning tactics.

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Trustees Forecast the Early Exhaustion of Two Social Security Trust Funds and the Depletion of a Third

In reports to Congress dated May 24, 1976, the trustees of four social security trust funds forecasted that three of the funds faced early exhaustion or depletion under existing laws under all three of the alternative sets of assumptions the trustees used. The trustees expect that the Disability Insurance Trust Fund will be exhausted in 1979 under all three alternatives, and that the Old-Age and Survivors Insurance Trust Fund will be exhausted in 1981, 1984, or sometime after 1984, depending on the assumptions used. Since the trustees expect the expenditures from these funds to exceed their income in every year beginning with 1976, the trustees also forecast continuing deficits over the long range (25 years). The trustees recommend that steps be taken to strengthen the funds over both the short and long ranges. However, the trustees opposed both the use of additional general revenue financing and a statutory increase in the taxable earnings base as methods of raising money for the funds. The reports set out the effect of the President's proposed 0.3 percent increase in both the employees' and employers' OASDI contribution rates and 0.9 percent increase in the self-employed rate, and the trustees recommend "appropriate increase in the tax rates."

The trustees found that the current financing schedule for the Federal Hospital Insurance Trust Fund is adequate to provide for expenditures for the next 10 years but that "tax rates scheduled after the mid-1980s are not sufficient to sustain the system, resulting in an average 25-year deficit of 0.64 percent of taxable payroll." The expected deficit is largely due to anticipated increases in hospital costs.

The trustees found that the Federal Supplementary Medical Insurance Trust Fund ratio of assets to liabilities declined slightly in 1975 and will continue to decline in 1976, but that an improvement in the funding is expected by June 1977.

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