DATE**:** 03-11-91

CITATION**:** VAOPGCPREC 24-91
Vet. Aff. Op. Gen. Couns. Prec. 24-91

TEXT:

SUBJECT: Utilization of Cooperative Living Facilities or Therapeutic Community Facilities.

(This opinion, previously issued as Opinion of the General Counsel 5-73, dated August 15, 1973, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

To: Chief Medical Director

QUESTION PRESENTED:

Is the establishment of therapeutic communities and similar training facilities for the rehabilitation of patients with psychiatric problems or suffering from alcohol or drug abuse or for spinal cord injury patients legally permissible as part of the VA hospital care program?

COMMENTS:

Several questions have recently been submitted to this office involving the proposed utilization of a type of treatment facility which differs from the type of hospital or domiciliary facilities generally in use in the VA. For example, inquiries have been received from a number of sources asking whether VA has the legal authority to establish residential treatment centers (i.e., halfway houses, cooperative living facilities, or therapeutic communities) in facilities obtained either by lease or purchase, located outside the grounds of a VA hospital. It is apparently contemplated that such facilities would be used as a part of the treatment and rehabilitation process of patients with psychiatric problems, or patients suffering from alcohol or drug abuse. The patients involved would, however, continue to be carried as inpatients of the nearest VA hospital.

Another proposal has been received from a hospital requesting to establish a spinal cord injury training "apartment" in the community. The "apartment" would, in effect, be an annex of the hospital to be used in training SCI patients, who are inpatients at the hospital, to adequately function in the community. It could also involve, as part of the training process, the inclusion of the wife or other family member.

It is recognized that the science of medicine is ever changing. New approaches to providing medical care are being utilized with much success. Added emphasis is being placed upon treatment approaches which do not require the patient to be confined to a hospital bed. In this connection, legislation has been enacted (Public Law 93-82) which gives authority to the Administrator to furnish care to veterans on an outpatient or ambulatory basis where such services would obviate the need for hospital admission. This same legislation has broadened the term "hospital care" to include mental health services, consultation, professional counseling, and training of the members of immediate families of veterans receiving medical care. It has also broadened the term "medical services" to include such home health services as the Administrator determines to be necessary or appropriate for the effective and economical treatment of a disability of a veteran who has received are in a VA facility.

As we understand the concept, the therapeutic community would be available for eligible veterans, who are patients in VA hospitals, but have obtained maximum formal hospital benefits. The emphasis would be upon rehabilitative measures, designed to ready the veteran for outside placement in the community, either in his own home, a foster home, or some other suitable facility, within one year. The veteran would learn self-sufficiency, would develop confidence to overcome obstacles, and would learn how to function in society despite his handicaps. These things cannot be adequately learned in the formalized environment of the hospital. The therapeutic community would be considered as an annex of the hospital, with the treatment provided on the basis of inpatient or continued hospital bed care, with hospital personnel either on the premises, or at least available.

A similar concept would be associated with the "apartment" for training veterans with spinal cord injuries. Since the physical disability of this vetean-group is not going to change, it is necessary that the veteran be trained to function maximally within his capabilities. He needs to test his tolerance for activity, and must understand the limitations necessary to maintain health. These things cannot be learned in the formalized environment of the hospital. Moreover, in most cases they cannot be learned without the assistance of a wife, parent, or friend. For this reason, the wife (or family member) must be included in the training program which is proposed for the "apartment."

There is, of course, no authority to provide lodging and meals to a veteran who has left the VA hospital, unless they are provided as a part of an authorized nursing home or domiciliary care program. On the other hand, while lodging and meals would be provided as part of the therapeutic community approach, and lodging in the SCI training "apartment" approach, these would be provided as an adjunct of the basic treatment program, involving a sheltered

environment in which psychosocial therapy and rehabilitative counseling can be provided in an informal setting.

Section 4101 of title 38 dictates that the "functions of the Department of Medicine and Surgery shall be those necessary for a complete medical and hospital service ..." Section 610 of title 38 authorizes the Administrator to furnish "hospital care" and "domiciliary care" to eligible veterans, and section 500(a)(1) of such title requires the Administrator, subject to the approval of the President, to provide hospitals, domiciliaries, and outpatient dispensary facilities for veterans entitled to hospital or domiciliary care or medical services. Moreover, clause (2) of that subsection directs the Administrator to maintain sufficient beds and other treatment capacities to provide care to eligible veterans.

Therapeutic communities, or the SCI training "apartment," can, in our opinion, be considered somewhat akin to the "restoration centers" which were created in the early 1960's in this agency. In an opinion dated April 20, 1962, this office held that the creation of restoration centers fell within the authority of the Administrator. The significant portion of that opinion was as follows:

"38 U.S.C. § 610 authorizes the Administrator to furnish 'hospital care' and 'domiciliary care' to veterans meeting the basic eligibility criteria. There is no specific mention in the statutes, however, of the special type of care proposed here. However, the 'restoree' would be a type of patient, drawn from the hospital, who would otherwise be furnished continued care in the hospital or a VA domiciliary ... The planned course of treatment can be regarded as either, ... and comes fairly within the general scope of the basic law and may be classified as hospital care or domiciliary care ..."

A similar conclusion was reached in an opinion dated October 26, 1962, relating to the day hospital plan for the treatment of psychiatric patients. All three of these approaches are, however, distinguishable from the foster home care program, the cost of which cannot be paid for by the VA (see 87 Op.Sol. 278). The distinguishing feature of the foster home care program is that it usually involves placing a generally stable patient in a home, other than his own, where he will not receive medical care as such, but will still receive some degree of assistance. On the other hand, he will not receive the type of continued medical care, psychiatric evaluation and treatment, and rehabilitative training that are considered to be an integral part of the therapeutic community program.

Given this background, and in the light of the broad authority of the Administrator to provide a complete medical care program for veterans, and to provide hospital care and medical services in the broadest sense of those terms, we believe the establishment of therapeutic communities, and similar training facilities such as has been proposed for spinal cord injury patients, is legally permissible as a basic element of the VA hospital care program. Furthermore, the involvement of a veteran's family in the treatment and counseling process appears to be legally

supportable, to the extent consistent with the recent extension of the term "hospital care" to include mental health services for the immediate family of the veteran receiving care. There is no authority, however, to contract for this type of "hospital care" unless it is for a service-connected disability, for a woman veteran, or for care outside the continental United States.

We are aware that some of the drug treatment units established within the confines of present VA facilities have been established and operated in a manner similar to a therapeutic community. For example, at one hospital, a separate building on the station grounds has been utilized. We understand, however, that consideration is now being given to obtaining facilities which are detached in distance from a VA hospital, and are located instead within the community in which the veteran ultimately desires to be located. The question then arises as to how these facilities can be obtained.

Authority is contained in section 5001 of title 38, United States Code, requiring the Administrator to provide, subject to the approval of the President, hospitals, domiciliaries, and outpatient dispensary facilities for veterans entitled to care. Such hospitals, domiciliaries, and other facilities may be provided by purchase, replacement, remodeling, or extension of existing plants. (It is to be emphasized that this opinion is based upon the understanding that the therapeutic communities would be an "extension" of, or an annex to, a VA hospital.) Furthermore, section 5012(b) of such title 38 authorizes the Administrator to procure the necessary space for administrative, clinical, medical, and outpatient treatment purposes, by lease, purchase, or construction. Since the facilities in question will be an "extension" of VA hospital facilities, the requirement of Presidential approval set forth in section 5001 would, of course, be applicable. Assuming this approval was obtained, the lease of available space would still be subject to the following requirements.

In an unpublished opinion rendered by this office dated October 8, 1970, it was held that there is no authority under title 38 for the VA to lease real property for periods beyond the fiscal year or to enter into such leases in excess of available appropriation balances. Also, the maximum length of such leases is one year because of appropriations availability, but they may be renewed, subject to the availability of future appropriations. Thus, leases for longer periods can only be made under the authority of the Federal Property and Administrative Services Act.

While authority for procurement of space for most Federal agencies is vested in the Administrator of the General Services Administration, GSA authorizes executive agencies to execute leases of property found to be "wholly or predominantly utilized for the special purposes of the agency to have custody thereof." Federal Property Management Regulations, s 101-18.106(c). The regulations in s 101.18.106-1 provide that "special purpose space" for the Veterans Administration includes space used for VA "hospitals and related

purposes." However, even this authority is limited to leases of no more than one year, unless specifically authorized by GSA. Such leases also are subject to the provisions of 40 U.S.C.A. § 278a, whereby the rentals paid may not be in excess of a per annum rate of 15 percent of the fair market value of the rented premises, nor can expenses made for alterations, improvements, and repairs exceed 25 percent of the amount of the rent for the first year of the rental term,except where the annual rental is $2,000 or less.

Although we will not elaborate in detail, since the proposed therapeutic communities and SCI "apartments" would be considered part of the VA hospital care system, and the veterans placed therein would be considered "inpatients" of those hospitals, the eligibility criteria applicable to hospital care would apply. Furthermore, patients receiving care in such facilities would be subject to the income and estate limitations applicable to veterans who are receiving monetary benefits (pension, compensation or retirement pay) while receiving care and treatment at Government expense (38 U.S.C. § 3203). In addition, the escheat and post fund provisions of section 3202(e) and 5220 of title 38 would also be applicable.

HELD:

In view of the broad authority of the Administrator to provide a complete medical and hospital care program for veterans, the establishment of halfway houses, i.e., therapeutic communities, is legally permissible as part of the VA hospital care program.

VETERANS ADMINISTRATION GENERAL COUNSEL
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