Illinois Health and Hospital Association

In re Julie M. Decision Reached By Illinois Supreme Court | Update on Rehearing Petition and Related Legislation

January 13, 2022

MEMORANDUM

In re Julie M. Decision

On December 16, 2021 the Illinois Supreme Court issued a decision in the case of *In re. Julie M.,* 2021 IL 125768 determining whether the respondent's petition for emergency admission by certification under Article VI of the Mental Health and Developmental Disabilities Code (Mental Health Code, 405 ILCS 5/) was timely under Sections 3-604 and 3-610.

As background, the respondent, previously diagnosed with multiple mental illnesses, arrived at Carle Foundation Hospital (Carle) via emergency medical services after swallowing batteries in an apparent suicide attempt. Just weeks before, Carle had previously treated the respondent for swallowing batteries, and it was the third time that year that Carle had treated the respondent for the same presenting problem. The respondent underwent an endoscopy, colonoscopy, and eventually open surgery to remove the batteries. Carle has a psychiatric team that provides for the psychiatric needs of patients housed throughout the hospital rather than a specific ward, unit, or section. Both the medical and psychiatric team managed the respondent's care and the psychiatric team regularly saw her. During her stay, the respondent's psychiatric medication was increased and, throughout her stay, she expressed suicidal ideations and attempted to hurt herself on several occasions, prompting Carle to provide a sitter to supervise her at all times.

After recuperating from her surgery, the respondent's medical team cleared the respondent as medically stable for discharge, however, the co-managing psychiatric team disagreed that discharge was medically appropriate given her prior history of swallowing foreign objects and the presence of surgical staples in her abdomen. Additionally, Carle was having a difficult time finding a facility to discharge the respondent as no family appeared able or willing to care for her, and the only other option respondent and her mother were considering was a homeless shelter. The day after Carle removed her surgical staples, the psychiatric team agreed discharge was medically appropriate. On the same day, Carle executed a petition and two certificates pursuant to the emergency admission by certification provisions of Article VI of the Mental Health Code, which Carle filed with the circuit court the next day.

The respondent moved to dismiss the petition alleging Carle had detained her involuntarily without petition, examination, or certificate from the time the medical team believed the respondent was medically stable for discharge in violation of sections 3-604 and 3-610 of the Mental Health Code. The circuit court denied the respondent's motion and, ultimately, held that she was a person subject to involuntary admission on an inpatient basis and ordered her hospitalized for no more than 90 days. On appeal, respondent sought reversal of the commitment order based on the untimeliness of the petition. The appellate court affirmed the circuit court's decision 2019 IL App (4th) 180753. The respondent appealed to the Illinois Supreme Court.

At issue was the statutory construction of the Mental Health Code's procedures under Article VI. Under Article VI, anyone 18 years or older may present a petition to the facility director of a "mental health facility" asserting that the respondent is a person subject to involuntary admission on an inpatient basis and in need of immediate hospitalization.[1] The petition must be accompanied by a certificate executed by a physician, qualified examiner,

[1] See *In re Linda B.*, 2017 IL 119392 - any facility, or any part of a facility that provides psychiatric treatment to a person with a mental illness qualifies as a mental health facility.

psychiatrist, or clinical psychologist asserting the same, indicating the respondent was personally examined no more than 72 hours prior to admission, and contain the factual basis for diagnosis and a statement as to whether the respondent was advised of certain rights.

Section 3-604 provides that a mental health facility cannot detain a respondent for examination based on a petition alone (no certificates) for more than 24 hours and, if no certificate is furnished, the respondent "shall be released forthwith." Section 3-610 requires the execution of a second examination and certificate within 24 hours of "admission" pursuant to Article VI and, if no certificate is furnished, the respondent "shall be released forthwith."

Addressing Section 3-610 first, the Court recognized the central dispute was when Carle admitted the respondent, the start of the 24-hour deadline for the execution of a second examination and certificate. Reviewing its previous construction of the term "admission" in the Mental Health Code,[2] the Court found that until a "mental health facility " met the necessary (but not necessarily sufficient) conditions of an executed petition and certificate, the statutory conditions of Article VI would not be satisfied, and no admission under Article VI would occur. Applying this construction to the facts of the case, the Court found Carle admitted the respondent, and deadline began, at the time Carle properly executed the petition and first certificate. Therefore, because Carle completed a second examination and certificate within hours of the petition and first certificate, the 24-hour deadline was satisfied. Addressing Section 3-604, the Court found it, and its 24-hour deadline, inapplicable to the case. The Court explained that not just any "detention" triggers the 24-hour deadline of section 3-604, but a "detention under this Article (Article VI) on the basis of a petition alone." Here, the Court found Carle never purported to detain respondent based on a petition alone.

The respondent argued that "treatment" and "admission" or "detention" are synonymous in the Mental Health Code and, therefore, prohibits a "mental health facility" from providing any mental health treatment unless or until the person is admitted pursuant to the applicable terms of Mental Health Code (Chapter III). The respondent argued holding otherwise strips the respondent of the Mental Health Code's protections. Consistent with this belief, the respondent argued Carle admitted the respondent: (1) on the date she arrived at Carle for attempted-suicide, (2) the earliest substantiated date Carle provided mental health treatment to her, or (3) when the respondent was medically stable for discharge and, furthermore, it should be Carle's burden to show the respondent's admission status.

In response, the Court found that the terms "treatment", "admission" and "detention" are repeatedly distinguished and that there is no indication that the legislature intended that any effort to improve a person's mental condition, such as by examining a person's mental state while in the hospital, qualify as an "admission" to a "mental health facility." Specifically, the Court noted that:

> *"There is no indication that the legislature intended such a result. Rather, the legislature specifically delineated when an admission occurs, no doubt to carefully cabin the social, professional, and legal consequences that flow from being involuntarily admitted to a mental health facility. Nor is there any indication from the text of the statute itself that the legislature intended to require that a person's legal status change to "admitted to mental health facility" before she could legally receive any mental health treatment of any kind. On the contrary, every indication from the statutory scheme suggests that the legislature intentionally decoupled these concepts for the protection of both recipients and facilities."* (In Re Julie M, Supreme Court decision, page 16).

[2] See *In re Andrew B., 237 Ill.2d 340* – the Mental Health Code uses admission in a legal sense (not solely physical entry).

The Court also found that the rights delineated in Chapter II of the Mental Health Code (rights of recipients) are applicable to all recipients of mental health treatment and a "mental health facility" detaining or providing mental health treatment to a person not legally admitted would be without any legal basis under the Mental Health Code for its actions.

Update on Rehearing Petition and Related Legislation

IHA collaborated with several members and other stakeholders in filing an amicus, or "friend-of-the-court", brief, in this case. In addition, during the Illinois General Assembly's Spring 2021 session as this case was pending, IHA discussed a change to the definition of "mental health facility" proposed in Senate Bill 586 (Sen. Julie Morrison) with various stakeholders. The proposed language would have provided hospitals with explicit permission to provide some mental health evaluations and treatment without first having to "admit" the patient under the Mental Health Code, as some advocates interpret the law to require. However, an agreement regarding the scope of permissible mental health treatment could not be reached.

The appellant and the Illinois Guardianship and Advocacy Commission has petitioned the Illinois Supreme Court for a re-hearing of the case. IHA believes the Court's holding should stand, as it is supportive of the integrated, holistic care our members strive to provide and consistent with our previous advocacy efforts. Since the Court's decision resolved interpretive concerns previously held by IHA with the Mental Health Code, proposed to be addressed by Senate Bill 586, IHA also believes that Senate Bill 586 is no longer necessary. Specifically, while the petition for re-hearing is pending and another equal branch of government is still considering statutory interpretation that would affect the issue related to Senate Bill 586, IHA is encouraging no further legislative action on the bill at this time.

For questions or comments directed to IHA regarding this memo, please contact Lia Daniels, Director, Health Policy, at ldaniels@team-iha.org or 630-276-5461.