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U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210



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This is in reply to your recent letter requesting this Department's review and comments on the work rights section of the Association of Medical Superintendents of Mental Hospitals' proposed Platform on Patients' Rights. As you perhaps are aware, the Federal district court at Washington, D. C., in Souder v. Brennan (Civil Action No. 482-73) will direct the Secretary of Labor to "implement reasonable enforcement efforts at non-Federal institutions for residential care of the mentally ill." A formal order is expected to be entered within the next two weeks.

The five draft paragraphs quoted in your letter, address a number of significant problem areas. Thus, paragraphs Nos. 1 and 3 recognize the problem of employment relationship between the hospital and the working patient and provide for compensation in accordance with the Act's minimum wage standards. Paragraph No. 2, on the other hand, recognizes that certain efforts may be performed solely for therapeutic or rehabilitative purposes and does not contemplate the establishment of an employment relationship. Paragraph No. 4 provides that wages paid to patients for work performed will be free and clear and will not be recouped by the hospital for patient care and treatment. Finally, paragraph No. 5 permits the performance of certain personal housekeeping tasks without compensation, and such functions, in this context, probably would not qualify as work anyway.

We should point out, however, that the proposals do not mention premium compensation for overtime work or equal pay for equal work. Also, in applying the FLSA, whether or not an individual is an employee depends upon the facts in each case.

We are encouraged by your efforts and sincerely hope that your Association will be able to persuade the various States to adopt measures along these lines. The Department of Labor stands ready to cooperate fully with those States which have determined that resident workers are to be treated as employees.

We trust these comments will be useful to you; however, if you feel that a conference will be helpful please let us know.

Sincerely,

Warren D. Landis

Warren D. Landis
Acting Administrator
Wage and Hour Division