THE NEW YORK TIMES, SATURDAY, JUNE 24, 1972

SUIT CHALLENGES U.S. HEALTH PLANS

Says Exclusion of Mentally Ill Violates 14th Amendment

By JOHN SIBLEY

The nation's Medicare and Medicaid programs have been challenged as unconstitutional in Federal court here because they specifically exclude the one million Americans who are treated each year in public institutions for the mentally disabled.

The suit asks the court to order both programs halted until a patient with a mental disorder can receive the same benefits as one with, say, a broken leg.

It was instituted by two mental patients on behalf of "all those similarly situated" in institutions across the country. The plaintiffs are identified as "John Legion," a 30-year-old patient at the Brooklyn State Hospital for the mentally ill, and "Lillian Hosts," a 10-year-old mentally retarded girl at the Willowbrook State School on Staten Island.

Their attorney is Dr. Morton Birnbaum, a physician and lawyer from Brooklyn who has made this issue a personal crusade.

'The Most Hopeless'

He selected his clients' pseudonyms, Dr. Birnbaum explained yesterday, as a way of showing that "legions" of mentally ill patients and "hosts" of mentally retarded people are vitally affected.

His suit describes these people as "the most disabled, the most chronically ill, the sickest, the most rejected, the most defenseless, the most abandoned, the poorest, the most hopeless and the most discriminated against discrete and insular minority in the United States today."

Extending Medicare and Medicaid benefits to these patients, Dr. Birnbaum estimated, would require about $1-billion in new Federal funds. This would mean an increase of roughly 13 per cent above current expenditures on the two programs.

The suit also asks that any new Federal funds be earmarked for the improvement in the care provided in states' mental institutions. Under the current programs, Federal funds for patients go into the states' general funds and can be diverted to other functions.

One of Dr. Birnbaum's basic contentions in the suit is that his clients have a constitutional right to "adequate care and treatment."

If a mentally ill person is committed to an institution involuntarily and then does not receive the best of professional care, the legal argument goes, he is being deprived of his liberty without the due process of law guaranteed by the 14th Amendment.

In a number of unsuccessful suits, Dr. Birnbaum has invoked this concept in efforts to obtain the release of mental patients who were being held against their wills in public institutions.

Last year, however, a Federal judge in Alabama upheld such contentions in deciding a class suit brought on behalf of 5,000 patients in a state mental hospital whose lawyers persuaded the court that they were not receiving adequate care.

Voicing hope for success in his New York case, Dr. Birnbaum said the Alabama case had "marked the first time an American court not only clearly recognized this right, but also the first time that American public mental-hospital personnel have agreed during litigation that patients have this right."

He said also that a favorable court decision was urgent because all of the current proposals for national health-insurance programs — including those put forward by President Nixon, Senator Edward M. Kennedy and the American Medical Association — would perpetuate the policy of denying benefits to patients in public mental institutions.