

Larger units may be OK'd for retarded

By ANEMONA HARTOCOLLIS

A federal appeals court panel has ruled that it may be appropriate for New York State to place severely mentally retarded patients in community-based residences of 10 to 50 beds.

The panel reversed a lower court ruling that required the state to transfer severely retarded patients from the Staten Island Developmental Center, Willowbrook, into group homes of no more than 10 beds.

The three-judge panel in the 2nd Circuit Court of Appeals, Manhattan, did not authorize the state to begin opening larger facilities. But it ordered the lower court judge, John R. Bartels of Brooklyn Federal Court, to reconsider the testimony of state witnesses.

Taylor R. Briggs, an attorney for the state, said yesterday that the "key" to the decision is that "Judge Bartels is not free to disregard the professional judgment exercised by the state commissioner and other experts on whom the state relied."

Bartels, in a decision last April, said small community residences are essential to provide a "nurturing, homelike environment" for the mentally retarded. His ruling reflected the position of plaintiffs including the New York Civil Liberties Union, the Legal Aid Society and a group of parents of mentally retarded patients.

But the appellate court said Bartels had imposed "far too strict a standard" on the state. The court sent the case back to Bartels, instructing him to decide whether 50-bed facilities would violate "accepted professional judgement, practices or standards." The unanimous opinion, issued Thursday, was written by Judge Henry Friendly and joined by Judge Jon O. Newman and Judge Charles E. Wyzanski.

In the same opinion, however, the appellate panel upheld Bartels' ruling that New York State had failed to live up to its obligation, under a 1975 court consent decree, to clean up Willowbrook. The panel said the lower court was correct in appointing a special master to monitor conditions at the institution.

In his April ruling, Bartels said that his own visits to the Island institution and state audits revealed kitchens infested by vermin, patients who lived in rooms reeking of urine and smeared with excrement, improper clothing, food stored at temperatures that encouraged spoilage and insufficient education.

Bartels gave the state until April 1, 1985, to reduce the population of Willowbrook to 250, by moving the patients into the community. The institution now has about 800 patients.

If Bartels agrees to expand the size of community residences from 10 beds to 50 beds, his ruling

will apply to hundreds of former Willowbrook patients who have been transferred to other state institutions in New York City.

Briggs, the state's lawyer and a partner with the Manhattan firm of LeBoeuf, Lamb, Leiby and McRae, said "professional judgment" should consider the tight real estate market, neighborhood opposition to homes for the mentally retarded, and the need to qualify for federal Medicaid funds. Medicaid generally will not fund smaller apartments, forcing the state to pay all the bills.