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/ New Law: Effective April 1, 2018 – Involuntary Treatment Act Applies to Patients with Substance Use Disorders

New Law: Effective April 1, 2018 – Involuntary Treatment Act Applies to Patients with Substance Use Disorders

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Purpose

The purpose of this bulletin is to provide information to hospitals about new requirements under the Involuntary Treatment Act (ITA) that take effect April 1, 2018. Under the law, E3SHB 1713 (<http://lawfilesexext.leg.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/House/1713-S3.SL.pdf>), hospitals must meet new requirements when presented with minors and adults who pose a danger to self or others or who are gravely disabled due to a substance use disorder. The new law is also known as the “Ricky Garcia’s Act” or “Ricky’s Law.”

This bulletin contains the following information for hospitals:

- Key changes to the Revised Code of Washington for Ricky’s Law for adults and minors;
- Applicability of *In re Detention of D.W.* for substance use disorder patients;
- Recommendations for hospitals under the new law;
- The Emergency Medical Treatment and Active Labor Act (EMTALA) and other considerations if no bed is available (**including recommendations document**)

(<http://www.wsha.org/wp-content/uploads/Considerations-in-Managing-Substance-Use-Disorder-Patients-under-Rickys-Law.pdf>)); and

- Information on upcoming WSHA/DSHS webinars about the law.

Applicability

This new law applies to the following hospital settings:

- Emergency departments;
- Inpatient units; and
- Any other location, such as an outpatient clinic, where staff may assess or refer a patient to a Designated Crisis Responder (DCR) for an evaluation for a substance use disorder.

Overview

Effective April 1, 2018, the ITA laws that have historically pertained to mental health treatment for adults and minors are amended to include treatment for patients with substance use disorders. Substance use disorder involuntary detention and commitment follows the same procedures, rights, requirements, and timelines as mental health requirements under the ITA. The law, E3SHB 1713 (<http://lawfilesexst.leg.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/House/1713-S3.SL.pdf>), was enacted by the legislature in 2016 to help patients who suffer from substance use disorders and are unwilling or unable to seek appropriate treatment voluntarily.

When a patient presents an imminent likelihood of serious harm to self or others, or is gravely disabled as a result of a substance use disorder, the hospital has an obligation under law to refer the patient for evaluation by a Designated Crisis Responder (formerly Designated Mental Health Professional.)

Secure detoxification facilities are locked facilities that were newly created under the law to serve substance use disorder patients who are involuntarily detained. The Department of Social and Health Services informed WSHA that only two adult secure detoxification facilities, with a combined total of 48 beds, will be available for patients when the law takes effect. For minors, there will only be one facility with four to eight beds.

Additional Considerations from *In re Detention of D.W.*

One important consideration in light of *In re Det. of D.W.*, 181 Wn.2d 201, 332 P.3d 423 (2014) (hereinafter “*In re DW*”) is the court’s analysis of RCW 71.05.360 concerning the rights of involuntarily detained persons and its applicability to involuntary detention of patients with substance use disorders. The Supreme Court of Washington held that a person who is involuntarily detained due to presenting a danger to self or others because of a mental health disorder has the right to receive appropriate care and individualized treatment.

Starting April 1, 2018, the *In re DW* court’s decision with respect to a patient’s right to individualized treatment when involuntarily detained will also likely apply to patients with substance use disorder. Involuntarily detaining patients with substance use disorders at a hospital due to 1a “generalized lack of room” at certified detoxification facilities or in approved substance use disorder programs directly conflicts with the requirements set forth in *In re DW* to provide adequate care and individualized treatment.

Hospitals must carefully consider and balance legal obligations under state and federal law, including the Emergency Medical Treatment and Active Labor Act (EMTALA) as described below.

A potential common scenario where there is no available detoxification bed

Based on conversations with the Department of Social and Health Services, WSHA understands that for patients (1) who meet detention criteria due to a substance use disorder and (2) where no secure detoxification facility bed or treatment program is available, the DCR will not be able to detain. This scenario will require hospitals to carefully consider EMTALA requirements, including obligations to screen and stabilize patients presenting to the emergency department prior to discharge. Where a patient has been deemed a risk to self or others by the DCR, regardless of a decision to detain or not detain, a decision to release the patient by the hospital could subject it to a risk of not having met stabilization requirements under EMTALA.

It is also important for hospitals to know the Single Bed Certification law, RCW 71.05.745 (<http://app.leg.wa.gov/RCW/default.aspx?Cite=71.05.745>), does not apply to patients with substance use disorders. When they can provide adequate care and individualized treatment, some hospitals have been using this law to offer mental health treatment to patients when other mental health treatment beds are not available. This will not be an option for secure detoxification beds.

Recommendations

WSHA recommends the following actions:

- Thoroughly review the new law with your hospital's risk managers and legal counsel;
- Consider the hospital's obligations under state law as well as EMTALA – ***click here for the document regarding Considerations in Managing Substance Abuse Disorder Patients*** (<http://www.wsha.org/wp-content/uploads/Considerations-in-Managing-Substance-Use-Disorder-Patients-under-Rickys-Law.pdf>);
- Develop procedures for when a Designated Crisis Responder finds a substance use disorder patient meets detention criteria, but declines to file a petition for involuntary detention due to a lack of room at a certified secure detoxification facility or in an approved substance use disorder treatment program;
- Attend the WSHA and DSHS webinar on Tuesday, January 30 or Wednesday, February 14 (the same content will be presented in both.)

Next Steps and WSHA's Continued Advocacy

WSHA has significant concerns about the lack of treatment capacity available in the state for patients who meet involuntary detention criteria due to a substance use disorder. WSHA has been working with legislators on HB 2401 (<http://app.leg.wa.gov/billsummary?BillNumber=2401&Year=2017>) and SB 6365 to advocate for changes that would suspend the law if data shows demand for involuntary treatment services is greater than treatment/bed capacity. Unfortunately, key legislators have told WSHA that an outright delay of the law is not an option they would consider. This means any proposed policy changes must still allow the new law to take effect before a solution is imposed. WSHA believes its proposed changes to the law meet that requirement.

WSHA Webinar on Ricky's Law:

WSHA is working with the Department of Social and Health Services to provide more information about the law to hospitals. We provided one webinar on January 30 and another upcoming webinar is listed below; each webinar covers the same content. Click here to register for the webinar. (<https://attendee.gototraining.com/rt/2678638312060069889>) If you have any questions about registering, please contact Dana Pellegrini at danap@wsa.org (mailto:danap@wsa.org) or 206-577-1852.

- Wednesday, February 14 from noon to 1 pm.

Scope of the New Law

The following are key areas of the Involuntary Treatment Act that hospitals should review and understand in caring for people with substance use disorders.

Key definitions in RCW 71.05.020 (<http://app.leg.wa.gov/rcw/default.aspx?cite=71.05.020>) – The Involuntary Treatment Act for Adults:

- *"Approved substance use disorder treatment program"* means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;
- *"Designated crisis responder"* (formerly referred to as a "designated mental health professional") means a mental health professional appointed by the behavioral health organization to perform the duties specified in this chapter;
- *"Detention"* or *"detain"* means the lawful confinement of a person, under the provisions of this chapter;
- *"Gravely disabled"* means a condition in which a person, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals:
- is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or
- manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;
- *"Imminent"* means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;
- *"Likelihood of serious harm"* means:
- A substantial risk that:
- Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;
- physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or
- physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

- The person has threatened the physical safety of another and has a history of one or more violent acts;
- *"Mental health service provider"* means a public or private agency that provides mental health services to persons with mental disorders or substance use disorders as defined under this section and receives funding from public sources.
 - This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, approved substance use disorder treatment programs as defined in this section, secure detoxification facilities as defined in this section, and correctional facilities operated by state and local governments;
- *"Professional person"* means a mental health professional or designated crisis responder and shall also mean a physician, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;
- *"Secure detoxification facility"* means a certified publicly or privately-operated facility, or program of an agency, providing acute and subacute detoxification services for intoxicated persons and that includes security measures sufficient to protect the patients, staff, and community; and
- *"Substance use disorder"* means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

Key provisions in RCW 71.05 – The Involuntary Treatment Act for Adults:

Under the new law, detention requirements under the ITA applicable to patients with mental health disorders will also apply patients with substance use disorders. Below are pertinent sections of the Revised Code of Washington that will apply to adult patients presenting an imminent likelihood of serious harm or grave disability due to a substance use disorder:

- Voluntary application for mental disorder or substance use disorder treatment—Rights—Review of condition and status—Detention—Person refusing voluntary admission, temporary detention. RCW 71.05.050(3) (<http://app.leg.wa.gov/RCW/default.aspx?cite=71.05.050>) "If a person is brought to the emergency room of a public or private

agency or hospital for observation or treatment, the person refuses voluntary admission, and the professional staff of the public or private agency or hospital regard such person as presenting as a result of a mental disorder or substance use disorder an imminent likelihood of serious harm, or as presenting an imminent danger because of grave disability, they may detain such person for sufficient time to notify the designated crisis responder of such person's condition to enable the designated crisis responder to authorize such person being further held in custody or transported to an evaluation treatment center, secure detoxification facility, or approved substance use disorder treatment program pursuant to the conditions in this chapter, but which time shall be no more than six hours from the time the professional staff notify the designated crisis responder of the need for evaluation, not counting time periods prior to medical clearance."

- Detention or involuntary outpatient evaluation of persons with mental disorders or substance use disorders—Procedure. RCW 71.05.150 (<http://app.leg.wa.gov/RCW/default.aspx?cite=71.05.150>)(1)(a) "When a designated crisis responder receives information alleging that a person, as a result of a mental disorder, substance use disorder, or both presents a likelihood of serious harm or is gravely disabled, or that a person is in need of assisted outpatient mental health treatment; the designated crisis responder may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention or involuntary outpatient evaluation, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention or involuntary outpatient evaluation...."
- Emergency detention of persons with mental disorders or substance use disorders—Procedure. RCW 71.05.153 (<http://app.leg.wa.gov/RCW/default.aspx?cite=71.05.153>)(2) "If a patient presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled due to substance use disorder, the DCR may take the patient into emergency custody in a secure detoxification facility or approved substance use disorder treatment program for not more than 72 hours, excluding Saturdays, Sundays, and holidays."

(4) "Persons delivered to a crisis stabilization unit, evaluation and treatment facility, emergency department of a local hospital, triage facility that has elected to operate as an involuntary facility, secure detoxification facility, or approved substance use disorder treatment program by peace officers pursuant to subsection (3) of this section may be held by the facility for a period of up to twelve hours, not counting time periods prior to medical clearance."

(5) "Within three hours after arrival, not counting time periods prior to medical clearance, the person must be examined by a mental health professional. Within twelve hours of notice of the need for evaluation, not counting time periods prior to medical clearance, the designated crisis responder must determine whether the individual meets detention criteria. If the individual is detained, the designated crisis responder shall file a petition for detention or a supplemental petition as appropriate and commence service on the designated attorney for the detained person. If the individual is released to the community, the mental health service provider shall inform the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and provided contact information to the provider."

Provisions for Minors

Key definitions in RCW 71.34.020 (<http://app.leg.wa.gov/RCW/default.aspx?cite=71.34.020>) – The Involuntary Treatment Act for Minors:

- *"Approved substance use disorder treatment program"* means a program for minors with substance use disorders provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;
- *"Designated crisis responder"* means a person designated by a behavioral health organization to perform the duties specified in this chapter;
- *"Gravely disabled minor"* means a minor who, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals, is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety, or manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;
- *"Inpatient treatment"* means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, residential treatment facility certified by the department as an evaluation and treatment facility for minors, secure detoxification facility for minors, or approved substance use disorder treatment program for minors;
- *"Medical necessity"* for inpatient care means a requested service which is reasonably calculated to:
 - Diagnose, correct, cure, or alleviate a mental disorder or substance use disorder; or
 - prevent the progression of a substance use disorder that endangers life or causes suffering and pain, or results in illness or infirmity or threatens to cause or aggravate a

handicap, or causes physical deformity or malfunction, and there is no adequate less restrictive alternative available;

- *"Professional person in charge" or "professional person"* means a physician, other mental health professional, or other person empowered by an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program with authority to make admission and discharge decisions on behalf of that facility;
- *"Secure detoxification facility"* means a certified publicly or privately-operated facility, or program of an agency, providing acute and subacute detoxification services for intoxicated persons and that includes security measures sufficient to protect the patients, staff, and community;
- *"Substance use disorder"* means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

Key provisions in RCW 71.34 – The Involuntary Treatment Act for Minors:

Under the new law, provisions of the are ITA applicable to patients with mental health disorders will also apply patients with substance use disorders. Below are pertinent sections of the ITA that will apply to patients less than 18 years old who present an imminent likelihood of serious harm or grave disability due to a substance use disorder:

- Minor thirteen or older may be admitted for inpatient mental treatment or approved substance use disorder treatment program without parental consent—Professional person in charge must concur—Written renewal of consent required. RCW 71.34.500 (<http://app.leg.wa.gov/RCW/default.aspx?cite=71.34.500>) (1) "A minor thirteen years or older may admit himself or herself to an evaluation and treatment facility for inpatient mental health treatment or an approved substance use disorder treatment program for inpatient substance use disorder treatment without parental consent. The admission shall occur only if the professional person in charge of the facility concurs with the need for inpatient treatment. Parental authorization, or authorization from a person who may consent on behalf of the minor pursuant to RCW 7.70.065, is required for inpatient treatment of a minor under the age of thirteen."

(2) "When, in the judgment of the professional person in charge of an evaluation and treatment facility or approved substance use disorder treatment program, there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder or substance use

disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to the facility."

- Evaluation of minor thirteen or older brought for immediate inpatient treatment—
Temporary detention. (Effective April 1, 2018, until July 1, 2026.) RCW 71.34.700 (<http://app.leg.wa.gov/RCW/default.aspx?cite=71.34.700>) (2) "If a minor, thirteen years or older, is brought to a secure detoxification facility with available space, or a hospital emergency room for immediate substance use disorder treatment, the professional person in charge of the facility shall evaluate the minor's condition, determine whether the minor suffers from substance use disorder, and whether the minor is in need of immediate inpatient treatment."

(3) "If it is determined under subsection (1) or (2) of this section that the minor suffers from a mental disorder or substance use disorder, inpatient treatment is required, the minor is unwilling to consent to voluntary admission, and the professional person believes that the minor meets the criteria for initial detention set forth herein, the facility may detain or arrange for the detention of the minor for up to twelve hours in order to enable a designated crisis responder to evaluate the minor and commence initial detention proceedings under the provisions of this chapter."

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