

Considerations in Managing Substance Use Disorder Patients under Ricky's Law

Effective April 1, 2018, the involuntary treatment act (ITA) laws that have historically pertained to mental health treatment for adults and minors, are amended to include 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. When a patient presents an imminent likelihood of serious harm to self or others or is gravely disabled as a result of their 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.)

The law, [E3SHB 1713](#), was enacted by the legislature in 2016 to help patients who suffer from substance use disorders and are unwilling to seek treatment voluntarily. The new law is commonly referred to as "Ricky's law."

Hospitals should plan now for the following situations:

- 1) Management of substance use disorder patient in an instance where a Designated Crisis Responder (DCR) finds the patient meets detention criteria, but declines to detain the patient due to no availability of a secure detoxification bed.
- 2) Management of what initially appeared to be a substance use disorder patient, but there is no bed available and the patient presents a likelihood of harm or is gravely disabled as a result of a psychiatric condition;
- 3) A situation where the DCR has been called to evaluate a patient, but has not arrived in the timelines outlined in the Involuntary Treatment Act of RCW 71.05 or RCW 71.34.

We hope this summary is helpful to hospitals as they prepare, and strongly encourage each hospital to consult legal counsel as it develops its plan.

Summary of Considerations:

- **Consider the EMTALA overlay.** Under EMTALA, a hospital is required to screen and stabilize or appropriately transfer a patient that comes to the emergency department seeking care. Even in the context of a ruling from the Washington State Supreme Court *In re Detention of DW*, a hospital cannot ignore its obligations under the federal Emergency Medical Treatment and Active Labor Act (EMTALA). A hospital may be faced with a DCR's decision not to detain a patient. Despite these circumstances under state law, the hospital may have a continuing obligation to provide treatment to stabilize the patient's emergency medical condition under EMTALA. Reconciling these two legal obligations puts the hospital in a difficult situation.
- **Designate a team.** If it has not done so already, the hospital should designate a team of individuals – available on each shift – to respond in a circumstance where a DCR declines to detain but the patient presents an imminent risk of harm to him/herself or others, or is gravely disabled. Individuals on the team may include clinicians, a lawyer or risk manager, and the administrator-on-call. It may be necessary to revise current emergency department processes for dealing with substance use disorder patients to incorporate this team.

- **Reach out to other key players.** Reach out to the organization responsible for the designated crisis responders (DCRs) in your area. WSHA would recommend discussing scenarios of patients and when to call the DCRs for substance use disorder patients. Additionally, we would recommend a discussion about what initially appears to be a referral for a substance use disorder, but the patient has a mental health condition. Hospitals still have the obligation to refer for mental health evaluation for a patient in crisis. Reaching out to some of the key players in advance can help avoid surprises. WSHA recommends contacting the Behavioral Health Organization, Designated Crisis Responders, and law enforcement. WSHA also recommends reaching out to the hospital's professional liability carrier to discuss contingencies that may arise.
- **Educate your administrative and clinical staff.** Identify and work to educate your administrative and clinical teams who will be interacting with this new law for patients in crisis from a substance use disorder.
- **Weigh the facts and circumstances of each individual case.** While it would be ideal to set up a protocol for managing patients in these challenging situations, instead, the hospital should demonstrate that it has weighed the individual needs and safety of each patient and acted accordingly in its decision-making.
- **Consider capacity of the patient.** As the hospital is determining whether to hold a patient that would otherwise be released by a DMHP due to a lack of a certified evaluation and treatment bed it should consider the capacity of the patient to engage in decision-making. This is particularly true if the patient insists on leaving against medical advice—does the patient have the capacity to make such a decision?
- **Document the hospital's steps.** As the hospital navigates the complexities of a given patient's situation, it should ensure its decisions are supported with appropriate documentation. The DCRs determination of whether the patient meets detention criteria, the DCRs decision to detain or not to detain, and the basis for the decision, should be noted in the chart. For the hospital's part, the patient's clinical condition, particularly conclusions about whether the patient presents an imminent risk of harm to him/herself or others or is gravely disabled, should be well described, along with the patient's decision-making capacity.

The hospital's ultimate decision whether or not to hold the patient after the DCRs decision to not detain a patient because of the DCR's assessment the patient did not meet criteria, and the basis for those decisions, should also be documented.

Finally, the documentation should demonstrate that whatever the decision, it was made in good faith and without gross negligence. A hospital's decision about admitting or discharging a substance use disorder patient, when made in good faith and without gross negligence, may be exempt from liability under both statute and case law. See RCW 71.05.120; *Poletti v Overlake*, 175 Wash. App. 828 (2013). A hospital's ability to secure liability protection will hinge in part on whether it meets the amended definition of "private agency" in the RCW 71.05. 020(39) that is effective on April 1, 2018.

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