Washington State Hospital Association

Ricky's Law: Involuntary Treatment for Substance Use Disorders

February 14, 2018

Washington State Hospital Association
Department of Social and Health Services

Presenters

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Washington State Department of Social & Health Services
Transforming lives

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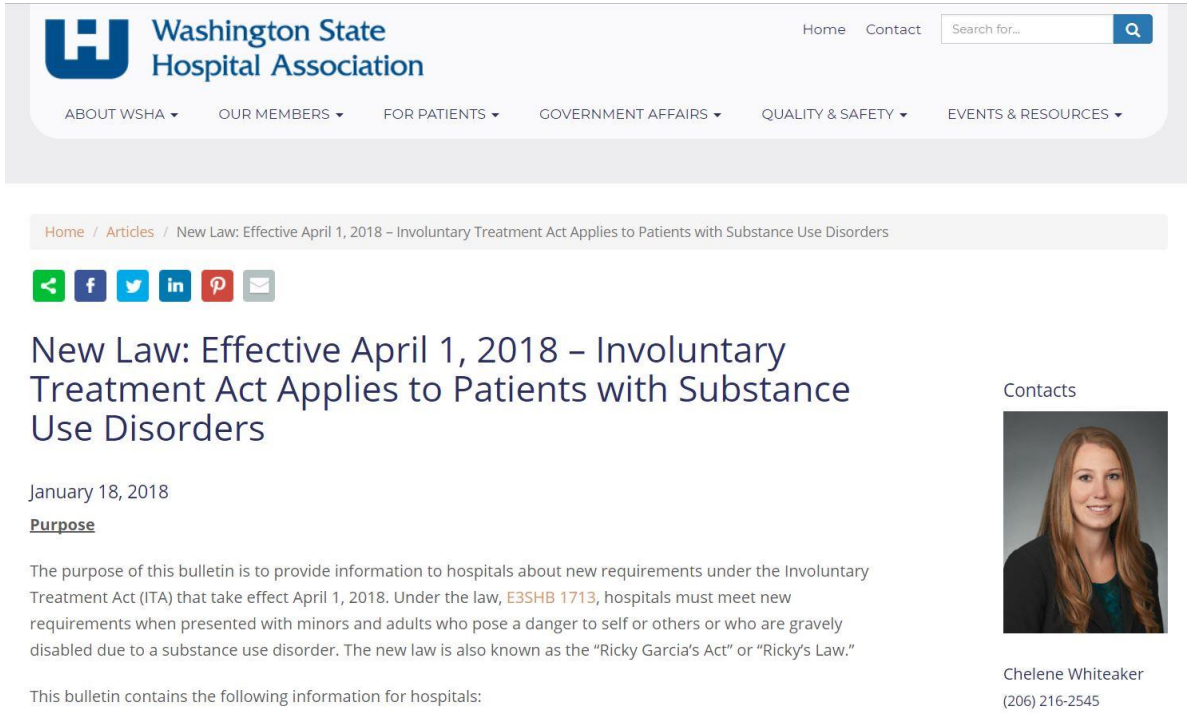
Objectives

- Help understand the new law
- Help hospitals plan for implementation

Resources

WSHA Bulletin on Ricky's Law



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

January 18, 2018

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, 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:

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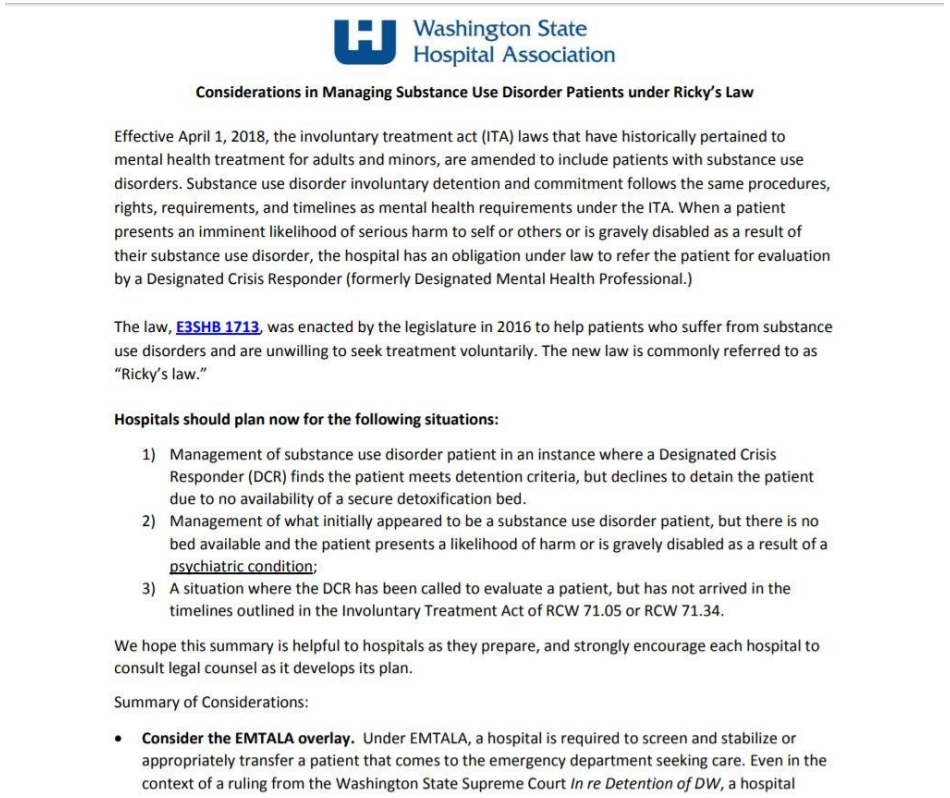
http://www.wsha.org/articles/new-law-effective-april-1-2018-involuntary-treatment-act-applies-patients-substance-use-disorders/

Considerations in Managing SUD Patients under Ricky's Law



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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

Website: http://www.wsha.org/wp-content/uploads/Considerations-in-Managing-Substance-Use-Disorder-Patients-under-Rickys-Law.pdf

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HB 1713

Integration of Substance Use Disorders into the Involuntary Treatment Act

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How did we get here?

History of Chemical Dependency Commitments – RCW 70.96A

- Pilot Project – Integrated Crisis Response (Secured Detox and CD detentions) RCW 70.96B 2006-2009

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How did we get here?

- Ricky's (Ricky Garcia) Law
  - Submitted to legislature in 2015
  - Primarily the efforts of one person: Lauren Davis
  - Passed in 2016 as part of HB 1713

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HB 1713: Ricky's Law

The two primary tasks of the Department (DSHS):

- Create Designated Crisis Responders (DCRs)
- Ensure that at least one 16 bed secure detoxification facility is operational by April 1, 2018 and a second facility is operational by April 1, 2019

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Current Practice

- DMHPs currently see about 70-92% co-occurring presentations.

  Many substance induced psychosis cases go to E&Ts and clear.

  (Some DMHPs do not detain anyone found positive for a substance. Some E&Ts refuse to accept anyone under the influence.)

- Ricky's law captures new population for substance use

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DCR Training

- Will train about 450 DMHPs across the state to be DCRs
  - Review of DSM-Substance Use Disorder criteria
  - Review of ASAM Assessment criteria
  - Review of Washington State Substance Use Disorder treatment
  - Risk assessment in the presence of a Substance Use Disorder
  - Clinical practice discussions and petition writing

  - Plan to provide quarterly DCR trainings ongoing for new hires

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Secure Withdrawal Management and Stabilization Facility (Secure Detoxification Facility)

Provide services at a similar level of an Evaluation and Treatment facility

- Detention equals the criteria for admission to a Secure Withdrawal Management and Stabilization Facility

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Facility Design

Up to an ASAM 3.7 Level of Care

- Medically Monitored Intensive Inpatient Services
- Physician available to assess in-person within 24 hours of admission
- Nursing assessment on admission
- Medication prescription and monitoring
- Coordination of necessary services and discharge planning
- Planned regimen of professionally directed evaluation and treatment services
- Availability of seclusion and restraint

E&T Level of Care

- Examination and medical evaluation within 24 hours by a licensed physician, advanced registered nurse practitioner, or physician assistant certified
- Nursing assessment on admission
- Psychosocial evaluation by a mental health professional
- Development of an initial treatment plan
- Consideration of less restrictive alternative treatment
- Availability of seclusion and restraint

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Proposed Secure Detox Facilities

American Behavioral Health Services
Adults

- In Chehalis, Lewis County with 24 beds
- In Spokane with 24 beds

Daybreak Youth Services
Minors

- In Vancouver WA with 3 beds
- Possibly in Spokane with 8 female youth-only beds

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Implementation

Who is involved?

DCR Teams

BHOs/MCOs/ASOs

Courts

Secure Withdrawal Management and Stabilization Services Providers

SUD Treatment Providers

Hospitals

Law Enforcement

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RCW 71.05.050

- RCW 71.05.050(3) "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."

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RCW 71.05.153 (effective April 1, 2018) Emergency detention of persons with mental disorders *or substance use disorders*

(1) When a designated crisis responder receives information alleging that a person, as the result of a mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated crisis responder may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in RCW 71.05.180.

(2) When a designated crisis responder receives information alleging that a person, as the result of substance use disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated crisis responder may take the person, or cause by oral or written order the person to be taken, into emergency custody in a secure detoxification facility or approved substance use disorder treatment program for not more than seventy-two hours as described in RCW 71.05.180, if a secure detoxification facility or approved substance use disorder treatment program is available and has adequate space for the person.

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Same Legal Criteria

- Risk, signs and symptoms of a Substance Use Disorder
  - Risk =Danger to Self, Others, Property, and Grave Disability
  - SUD = Signs and Symptoms of Substance Use Disorder

- Examples
  - May not need to be under the influence to meet criteria
  - Intoxication from substances alone may not lead to detention
  - History of patients with SUD will be important

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Same Legal Timelines

- Designated Crisis Responder timelines
  - 3 hour - MHP evaluation
  - 6 hour – If person comes to the ER on their own
  - 12 hour – If person is sent to ER by police
- 72 hour detention
- 14 day commitment
- 90 day less restrictive alternative

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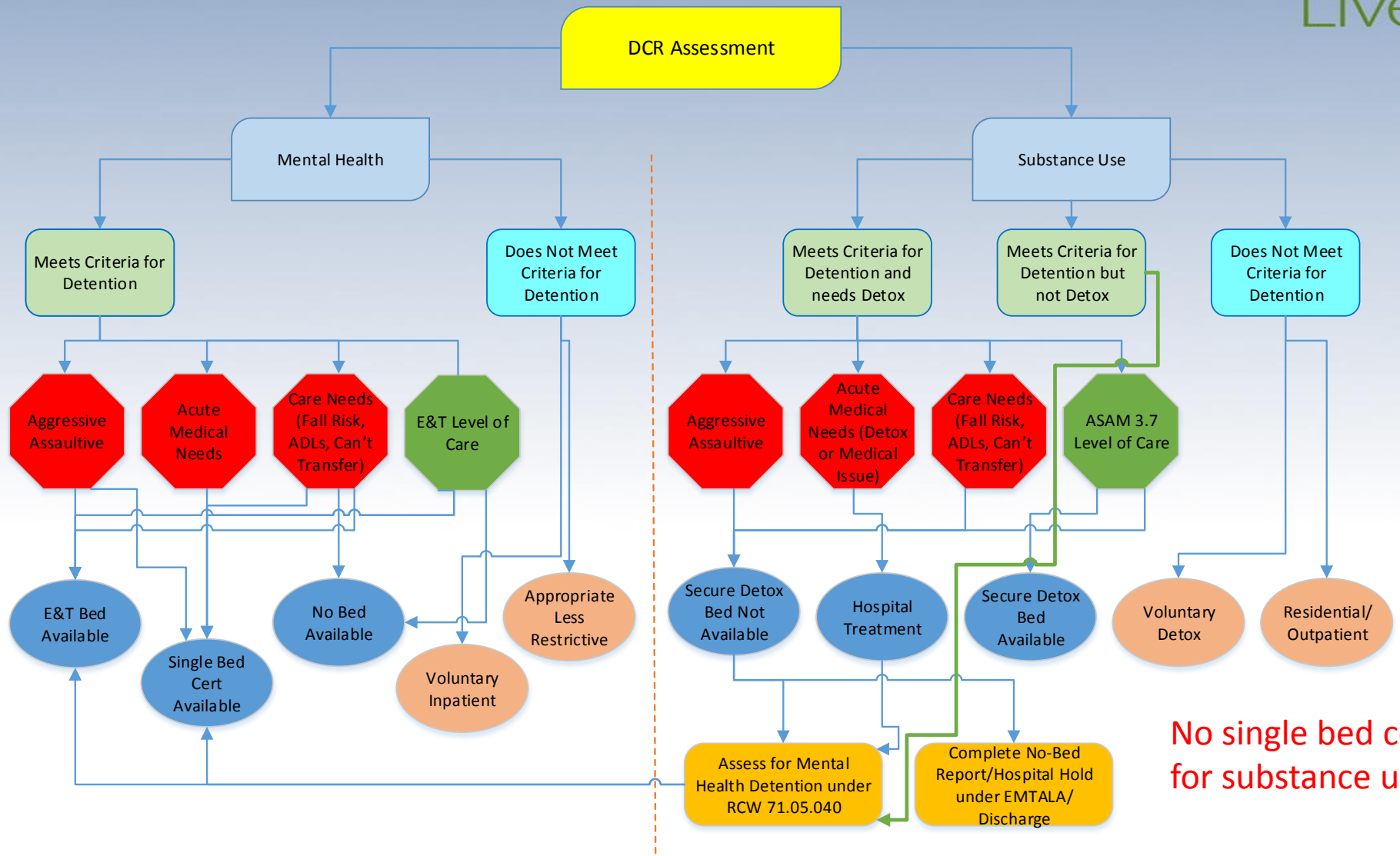

No single bed certification for substance use disorders

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Challenges

- Limited bed capacity as the number of Secure Withdrawal Management and Stabilization facilities slowly grows
- Long distances to transport to limited Secure Detox units
- Court differences
- Lack of medical detox facilities for severe Alcohol and Benzo withdrawal

WSHA Legislative Approach

Problem: Concern about limited capacity

Timing: Law takes effect in April after legislature adjourns

WSHA approach: SB 6365/HB 2401 would suspend Ricky's law for patients with substance use disorders until more treatment capacity can be developed

Bill link: http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Bills/6365.pdf

Scenarios

- Hospital refers, patient meets criteria to be involuntarily detained, but no bed and designated crisis responder cannot detain

- Patient initially appears 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

- A situation where the DCR has been called to evaluate a patient, but has not arrived in the timelines

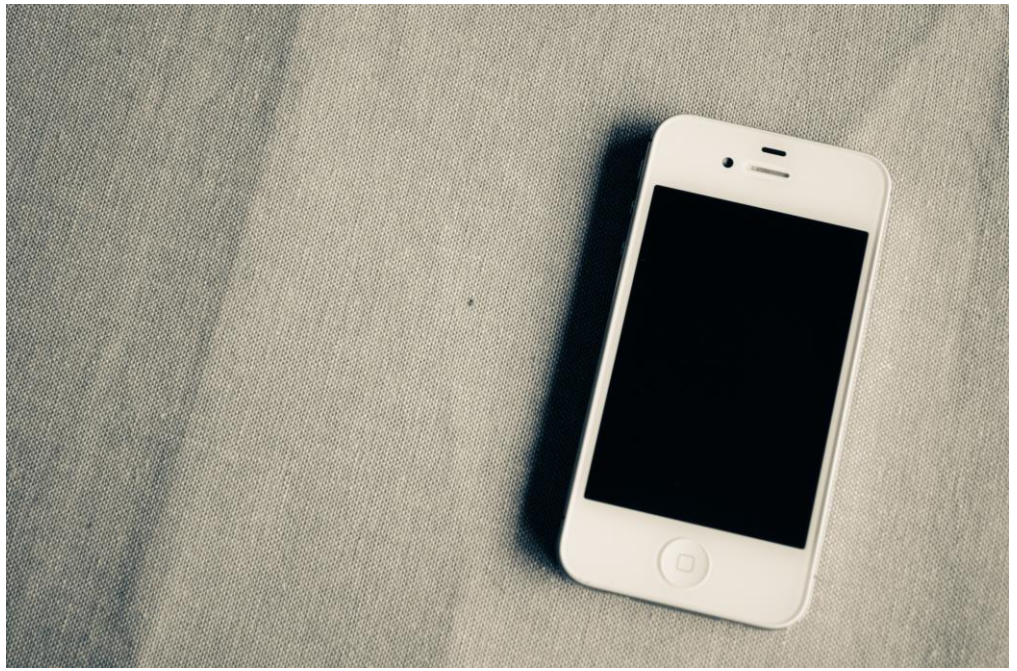
WSHA Recommendations

1. Talk with legal counsel
2. Consider the EMTALA overlay
3. Designate a team
4. Reach out to other key players
5. Educate administrative clinical staff
6. Weigh the facts and circumstances of each individual case
7. Document, document, document
8. Be prepared for bumps, this is a new law

Planning for Referrals

- When to refer under the new law
  - Example

WSHA recommendation: talk with your local BHO or the organization who has the crisis services contract in your region



Planning for Long Waits for Evaluations

- Timelines for designated crisis responder's evaluations are the same as for mental health patients
  - 6 hours
  - 12 hours

EMTALA Considerations

Contact Information & Further Questions

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