

Gun Control's Effect on the Changing Landscape of Mental Health Laws

In the wake of the school shootings in Newtown, Connecticut on December 14, 2012, there has been much discussion regarding mental health laws and gun control laws across the United States. The shooting was the second deadliest school shooting in the history of the United States.

In Virginia, the mental health laws were substantially revised for the first time in approximately thirty years after the Virginia Tech tragedy. In April 2008, one year after the Virginia Tech shootings, 26 new mental health laws were signed into law in Virginia. Prior to the changes passed by Virginia's legislature in 2008, Virginia's mental health laws had not been materially reformed in nearly thirty years.

After the Newtown shooting, we are already seeing a push for other new laws and legislation, both in the mental healthcare arena and on the gun control front. This time, though, the news is at both the state and the federal levels. On the state side, many have put forth proposals to bolster their own state health laws, but have received a wide array of reactions. Some are criticizing these states as being too hasty and putting together

immediate "fix-its" without fully examining the issues. Others have pushed for a standardization of involuntary mental commitment, such that it will be the same from state to state.

On the national front, President Obama's recent gun control proposals also contained a push for better mental healthcare. He has promised to release final regulations for the Mental Health Parity and Addiction Equity Act later this year. Whereas the current Act requires large employers to offer equivalent medical and mental health benefits through their insurance plans, it is expected that those protections will be extended to small employers, self-insured individuals, and Medicaid patients. President Obama is also notifying state health officials what the state Medicaid plans must cover in regard to mental health care. There are of course mixed reactions to these anticipated regulations and the financial means by which these objectives will be met.

There has also been some controversy over whether physicians may discuss guns with their patients and whether physicians may ask if their patients

own guns. President Obama recently stated that, in his opinion the Affordable Care Act (ACA) allows physicians to ask patients whether they have guns in their homes and permits them to discuss gun safety with patients. Some had expressed concern that the ACA did not permit these discussions due to a provision which restricts insurers' wellness and disease prevention programs from requiring data collection on individuals' guns. The administration also provided clarification that, if physicians learn during these discussions that a patient is threatening violence against himself or others, HIPAA does not prevent the physicians from reporting these threats of violence to the police.

Also in January, President Obama proposed a new program, dubbed Project AWARE (Advancing Wellness and Resilience in Education), with a goal of reaching 750,000 young people with mental illness and referring them to treatment. As this and other programs go into effect, we anticipate continual changes to the provision of mental health care and the laws affecting such treatment, who may receive it, and funding sources.

The Department of Health and Human Services (HHS) is also launching “a national dialogue on mental health.” The hope is that with more open discussion, some additional solutions to the pervading problems of mental health may come to the forefront.

Finally, on Thursday, January 24, 2013, the Senate Health, Education, Labor and Pensions (HELP) Committee examined the state of the United States’ mental healthcare system. It was the first time that the HELP Committee had conducted a hearing on mental health issues since 2007. Senator Lamar Alexander (R-TN), the leading Republican ranking member of the Committee, noted at

the beginning, that in his opinion, there are really two questions we need to be asking: (1) who needs help, and (2) who is there to provide the help. He asked what can we do at the federal level to identify who needs the help, and how we can get them the help they need. There were a myriad of suggested answers to those questions during the hearing.

In the last week, we have seen the mental health and gun law issues play out once again in the situation in Alabama, wherein a mentally ill man shot and killed a bus driver and then placed a 5-year old child in a bunker with him for almost a week. Based on these unfortunate situations, and likely others to

come, we anticipate seeing many additional changes in the behavioral health law arena in the next year – both federally and state-based.

The attorneys at Hancock, Daniel, Johnson & Nagle, PC are available to assist in all areas related to behavioral healthcare law. If you have any questions about how these updates or any behavioral health law matters may impact you, contact Molly Huffman at mhuffman@hdjn.com. For telephone inquiries, please call Molly at 804-967-9604.

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