State of Mind: The forced treatment debate
February 5, 2014

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Editor's note: This is the third installment in an ongoing series of stories intended to advance the conversation on mental illness and how it affects our community. The opinions expressed are those of the author and do not necessarily reflect those of his employers, past or present. Read the rest of the series here.

There's no simple answer.

This was the common response I received when I began interviews and research on the topic of forced treatment and forced medication of people with mental health issues. Almost everyone agreed: there are times when someone might need involuntary care. While Vermont currently has laws in place to address involuntary treatment, there is a proposed bill, S.287, currently in committee in the Senate that seeks to expedite the process.

On the surface it would seem speeding up the process would benefit everyone, but not everyone agrees. Clearly by reactions across the state, the issues related to this bill run deeper than the speed of a judicial review. There have been two recent public hearings where doctors, family members and people who have experienced forced treatment first-hand have given testimony. The arguments have been passionate on both sides. It's clearly a debate that is not over.

The law as it stands now relating to commitment and forced medication allows for a step-by-step process whose goal is to keep people safe while allowing them rights. If someone has a mental illness and is believed to be a danger to themselves or others, he or she can be held for 72 hours for an emergency evaluation. If that evaluation confirms both their mental illness and that they are a danger to themselves or others, they can be held until a commitment hearing occurs. Only once someone is committed can they then be forcibly medicated — if it is shown they do not have the capacity to make medical decisions. This is determined in a second hearing.

S.287 seeks several major changes that have raised concern, two of which I will explore here. First, there is already a provision in place where a person can seek an expedited hearing. The bill would expedite virtually everyone's hearings.

Second, the bill allows for the state to seek an order for involuntary medication at the same time as it files for commitment.

Proponents of this bill have sought to downplay its impact, stating that it is a matter of judicial review and improving the system.

Sen. Richard Sears, a Democrat from Bennington County and chair of the Senate Judiciary Committee, is one of the proposed bill's sponsors. "Just to be clear the bill is more about court process and access to mental health care than 'forced medication,'" Sears said in an email response. "That battle was fought years ago. The bill's focus is on making process changes that will allow the system to be more timely and be more responsive to individual circumstances. The bill will allow the system to better address issues such as patient-to-patient violence and previous judicial decisions about treatment."
The Vermont State Hospital in Waterbury. (Jeb Wallace-Brodeur / file photo)

The Vermont State Hospital in Waterbury. (Jeb Wallace-Brodeur / file photo)
IRENE FALLOUT

Many lay the blame for the current state of affairs at the feet of Tropical Storm Irene. The closure of the Vermont State Hospital has certainly had a significant impact on treatment of those most in need of care. Until Aug. 29, 2011, when Irene forced the evacuation of the State Hospital, non-emergency involuntary psychiatric medications were given only at VSH.

When patients were relocated to other hospitals and facilities around the state, then-Commissioner Christine M. Oliver designated Fletcher Allen Health Care, Rutland Regional Medical Center and the Brattleboro Retreat for involuntary medication procedures. All three hospitals have struggled to manage both increased numbers and increased risk.

There is no question complaints have been raised in emergency rooms across the state. Emergency room staff are ill-trained and ill-prepared to handle people who are in acute states of mental illness. While ER staff are accustomed to seeing "blood and guts," the disturbing nature of what mental illness really looks like is a very different matter.

As a psychiatrist and Medical Director at the Howard Center, an outpatient facility in Burlington, Dr. Sandra Steingard sees people with a range of issues every day. Previously, she served as the psychiatrist at the state hospital. Through that experience she can appreciate that inpatient and outpatient treatment are significantly different.

Steingard explains involuntary treatment and medications are sometimes the only option doctors have.
"In a hospital system that is predicated on treating psychosis with medications, there are times when involuntary medication becomes necessary," she said. "Units can become dangerous if people are confined and not on tranquilizing drugs."

At the same time, Steingard was sympathetic to all points of view.

"It's a difficult topic without a clear right or wrong. (Forced treatment and forced medication) can be an extremely traumatic experience for many people," she said.

One key point Steingard makes is that everyone is implicitly part of the involuntary system of care. “There are treatment settings that are entirely voluntary yet turn away people because they cannot manage the intensity of certain people’s symptoms,” she said. “By doing this they are admitting that there are limits to what can be done. Someone needs to step in, and we should be cautious about passing judgment on people advocating forced treatment if we are not at the same time able to offer a clear and effective alternative.”

In regard to the potential bill, Steingard’s main concern is that we continue to protect due process. “We don’t want to have an illusion of legal representation. The defense needs to have the time and resources to present a fair case,” she said. “If the pace is too quick, that could get people out faster but also lead to a rush to judgment in retaining people against their will.”

DEFENDERS

The lion’s share of the defense of people faced with forced treatment and medication lies with the Mental Health Law Project. Part of Vermont Legal Aid, the MHLP provides representation in mental health proceedings across Vermont. The MHLP is appointed by Vermont’s Family Courts to represent people with mental health issues in involuntary proceedings at Vermont’s six psychiatric hospitals. They also provide support for people living in the community who have become subject to the involuntary mental health system.

The organization’s director, John “Jack” McCullough, is clearly invested and affected by the outcome of this bill. He expresses no doubt that S.287 would not only increase his workload, but also infringe on the rights of people with mental illness, and that changes in the process would lead to more people on medications involuntarily.

“There is a belief that if we can get to the stage where we are forcibly medicating people sooner, they will respond more quickly and free up beds for other people,” he says. The truth is forcing medications damages relationships with caregivers and people often recovery without meds.

The expedited process would also lead to people’s cases being rushed to trial, not allowing the patient and attorney to mount a proper defense. People who have been brought to a commitment hearing are allowed an attorney, witnesses and an independent psychiatric exam.

“To fairly represent someone, I need to be able to talk with them and interview witnesses,” McCullough says. “There are also often hundreds of pages of medical records to review.” He says the current system is workable but it will be much harder to help anyone under expedited circumstances.

Rep. Anne Donahue (R- Northfield) speaks on the floor of the Vermont Statehouse. (Jeb Wallace-Brodeur / file photo)

Rep. Anne Donahue, R- Northfield. (Jeb Wallace-Brodeur / file photo)

‘PEOPLE CAN FEEL PAIN’

Concerns about the loss of due process were common among mental health advocates with whom I spoke.
Michael Sabourin is a patient representative for Vermont Psychiatric Survivors. “It’s going to be hard for me to explain to people they now have even less rights,” he says.

As a patient representative, Sabourin visits people in hospitals to help them understand and navigate the system.

“The goal should be person-centered care,” he says. “This bill would be a setback for this and a setback for recovery.”

He feels that even people who don’t benefit directly or win their case feel validated that there is a process. “Even people who are delusional can think and feel. People can feel pain.”

That said, he doesn’t believe this bill has anything to do with relieving people’s suffering, or that medications are a cure all. “There is an assumed benefit to treatment that we know is not true,” he said. “…This expedited process will kill dialogue.”

In addition to the reduction in time for due process, another component to S.287, has many people quite alarmed. As it now stands, a person can not be forcibly medicated until they have had a hearing and the opportunity to appeal it. Language in the proposed bill would allow for the almost simultaneous application of both commitment and involuntary treatment.

No one who I interviewed denies that this would increase involuntary medication. And many spoke to the long term effects of being forcibly medicated.

“Involuntary medication is not just highly traumatic, it creates distrust in any (future) attempts to offer help,” says Rep. Anne Donahue (R-Northfield).

Donahue is also the editor of the publication Counterpoint, which focuses on mental health issues. She notes that forced treatment more often than not creates poor outcomes in the long term as people discontinue treatment as soon as they leave the hospital. She cites a common statistic shared by many advocates: often people brought in on involuntary status switch to voluntary — many who initially refuse medications later agree to take them.

This trend was backed up by statistics and charts submitted on Jan. 22 to the senate committee by Judge Amy Davenport (see below). Out of the 455 cases filed for involuntary treatment in 2013, 316 were dismissed prior to hearing. While there were only 42 cases filed for forced medication, 9 of those were dismissed. This is more than 20 percent of the people who most likely under the new law would have been forcibly

medicated. Based on these numbers, S.287 would significantly increase both involuntary admissions and forced medication.

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‘NOTHING WORKS FOR EVERYONE’

“We need to really be weighing the amount of time saved and realize that we are trading that against the person’s attitude toward the system for the rest of their lives,” says Ed Paquin, executive director of Disability Rights Vermont. “There are some people that medications won’t stabilize. Nothing works for everyone.”

Paquin expressed concerns that our current system was in part to blame. “The (psychiatric) units are not conducive to safety.”

Disability Rights Vermont challenges the Senate to invest more money in resources if they want the system to move faster.

“We need more lawyers, judges, doctors, etc.” says Paquin.

This view is echoed by DRVT’s attorney A.J. Ruben. In testimony to the Senate Committees on Judiciary and Health & Welfare, Ruben said, “The current unsatisfactory situation to be addressed by the bill (that) some very few patients who are refusing psychiatric medications and causing disruption and harm to themselves and others pending the court process … is caused by the lack of adequate resources in most aspects of our mental health and judicial system.”

As recently as Jan. 15, 2013, the Department of Mental Health released a report stating the following:

“The Department of Mental Health acknowledges that the outcome of medical care by court-mandated involuntary care, including the use of non-emergency involuntary medication, is not a preferred course of an ideal plan of care.”

The report also states:

“The medication is only a part of the treatments that can move individuals toward discharge. Additionally, recovery can be slow. Further, it is always possible that persons may stop the use of medication following discharge from the hospital, and many of them do. The situation is far from ideal, as the use of coercion to gain a patient’s agreement to take medication that will address his/her symptomatology is the least-preferred avenue on

which to move toward recovery. A trusting doctor/patient relationship may, in fact, be more effective in a person's decision to take medication as prescribed. Medication, whether voluntary or involuntary, is often a component of recovery and symptoms can be alleviated through its use."

A CHOICE IN THE MATTER

As the debate continues, both sides will trot out experts and even examples where people have literally died without — or because of — forced medication. The truth is the cases that are reaching this level of crisis that would call for the measure this bill prescribes are slim.

At the same time, for a majority of people struggling with mental health issues this is a lifelong battle. Despite any perceived benefit, the long term impacts of forced treatment and forced medications is trauma.
Forced treatment is a violent act. People feel violated and many never completely recover. In no other form of treatment are people forcibly given medications or locked up against their will. In Vermont, a person can refuse treatment for any variety of physical health issues, but not mental health.
THE CAPACITY TO REASON

There are still many misconceptions about mental illness, as well as unspoken beliefs. People believe that when someone is mentally ill, they lose all capacity to reason. This is not the case. You may find it more difficult to communicate with them and they may not be reasonable all the time, but who is?

People with mental health issues — even when they are delusional — can both reason and be reasoned with. I believe the way in which others approach people with mental health issues drastically influences their efficacy in this area.

There is also this false notion that people with mental illness are childlike — that they don't know what is best for themselves. I'm not sure I can put into words how degrading that attitude is. In most situations where a person is in need of a guardian, judge or doctor to step in, that person who is "standing in" tends to base their decision-making on what the person would have wanted for themselves. Again, the standards are different for people with mental health issues. In this case people look at what they feel is best for us.

Sadly, I don't think that in the case of S.287 it is even close to being about what is best for those of us mental health issues. With advocates and people with lived experience lining up against the bill, it's certainly not what we want for ourselves.

This bill is an attempt at a simple answer to a complex problem. The hospitals that are trying to pick up the slack from the closure of the State Hospital are struggling, and it would be easier for them if they could drug up patients at the smallest sign of disruption. With the system not working, do we blame the people who are trapped in it?

There are many people with mental illness who are well enough to look back and understand what they really needed at the time. A young woman from Brattleboro may have put it best in her testimony when she noted that she had yet to hear someone testify for this bill who had been through forced treatment themselves.

It's clear based on testimonies both sides of this debate that the process of forced treatment is broken. Unfortunately, S.287 is not the fix.

George Nostrand was diagnosed as a young adult with Bipolar. While never committed, he has been hospitalized more than a half-dozen times and overmedicated with meds not helpful to his wellness. He is proud to have worked beside other people with mental health issues to raise awareness and fight stigma.