

2017 Acts Concerning Mental Health Care

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Overview of Acts

- **Act 34**, An act relating to evaluation of suicide profiles
- **Act 35**, An act relating to consent by minors for mental health treatment
- **Act 45**, An act relating to establishing the Mental Health Crisis Response Commission
- **Act 51**, An act relating to mental health professionals' duty to warn
- **S.133**, An act relating to examining mental health care and care coordination (passed by the Legislature, currently with the Governor)

Act 34: An act relating to evaluation of suicide profiles

- Requires the Secretary of Human Services to:
 - present to SHW and to HHC by **January 15, 2018**, a summary of the Agency's internal Public Health Suicide Stat process results and any report or analyses completed pursuant to the Agency's participation in the CDC's National Violent Death Reporting System grant
 - present plans to SHW, HHC, and GMCB by **January 15, 2019** describing how certain data shall be collected after the National Violent Death Reporting System grant expires
 - submit a report to SHW, HHC, and GMCB by **January 15, 2020** summarizing information from the Agency's final National Violent Death Reporting System grant

Act 35: An act relating to consent by minors for mental health treatment

- Enables a minor to consent to receive any legally authorized outpatient treatment from a mental health professional without the consent of the minor's parent or legal guardian
- "Outpatient treatment" in the context of this act refers to psychotherapy and other counseling services that are supportive, but not prescription drugs

Act 45: An act relating to establishing the Mental Health Crisis Response Commission

- Creates the Commission within the Office of the Attorney General for the purposes of reviewing & improving law enforcement interactions with persons acting in a manner that created reason to believe a mental health crisis was occurring
- Referrals:
 - Interactions resulting in death or serious bodily injury to any party to the interaction **shall** be referred to the Attorney General by the relevant law enforcement agency within 60 days of the incident
 - Other interactions, including those with positive outcomes, **may** be referred for optional review to the Commission
- Requires the Commission to report its conclusions & recommendations to the Governor, General Assembly, and Chief Justice of the Vermont Supreme Court as the Commission deems necessary, but at least once per calendar year

Act 51: An act relating to mental health professionals' duty to warn

Legal & Historical Overview

- *Tarasoff v. Regents of University of California* (1976)
 - The California Supreme Court in *Tarasoff* held that the special relationship between a psychotherapist and a patient imposes on the therapist a duty to act reasonably to protect the foreseeable victims of the patient.
- Issue of First Impression in Vermont (1985)
 - The Vermont Supreme Court in *Peck v. Counseling Service of Addison County, Inc.* held that “a mental health professional who knows or, based upon the standards of the mental health profession, should know that his or her patient poses a serious risk of danger to an *identifiable* victim has a duty to exercise reasonable care to protect him or her from danger.” [Emphasis added.]
- *Kuligoski v. Brattleboro Retreat* (2016)
 - The *Kuligoski* Court held that a psychiatric hospital and designated agency (i.e. mental health professionals) had a duty to inform parents caring for a recently discharged patient of the patient’s risk of harm to himself and others and to provide information on managing the patient’s ongoing treatment.

Act 51 (continued)

- Act 51 negates the *Kuligoski* holding and limits a mental health professionals' duty to that as established in common law in *Peck v. Counseling Service of Addison County, Inc.*
- It specifies that the *Peck* duty shall be applied in accordance with State and federal privacy and confidentiality laws.
- It further specifies that the act does not limit claims under State or federal law related to safe patient care, nor does it affect the requirements for mental health professionals to communicate with individuals involved in a patient's care in a manner that is consistent with legal and professional standards.

S.133: An act relating to examining mental health care and care coordination

- The Secretary of Human Services, in collaboration with the Commissioner of Mental Health, the Green Mountain Care Board, providers, and persons affected by current services, is required to produce an **analysis** and **action plan** for the General Assembly by **December 15, 2017**, which shall:
 - Specify steps to develop long-term vision of how integrated, recovery- and resiliency-oriented services shall become part of a comprehensive and holistic health care system;
 - Identify data necessary for future planning, long-term evaluation, and quality measures;
 - Identify causes underlying increased referrals and self-referrals for emergency services;
 - Identify gaps in services affecting ability of individuals to access emergency care;
 - Determine whether appropriate types of care are available as services in VT;
 - Determine availability and regional accessibility of mental health services;
 - Identify barriers to patient care and opportunities for improvement;
 - Incorporate existing information regarding emergency department wait times;
 - Incorporate anticipated demographic trends, the impact of opiate crisis, and data that indicate short- and long-term trends; and
 - Identify the resources necessary to attract and retain qualified staff to meet identified outcomes required of designated and specialized service agencies.
- A **status report** describing the progress made in completing the analysis and action plan shall be submitted to the General Assembly by **September 1, 2017**.

S.133(continued)

- The Secretary must submit a comprehensive evaluation of the overarching structure for the delivery of mental health services in Vermont by **January 15, 2019**. This **long-term vision evaluation** shall address:
 - Whether the current structure is succeeding in serving Vermonters with mental health needs and meeting goals of access, quality, and integration of services;
 - Whether quality and access to mental health services are equitable throughout Vermont;
 - Whether the current structure advances the long-term vision of an integrated, holistic health care system;
 - How the designated and specialized service structure contributes to the realization of the long-term vision;
 - How mental health care is being fully-integrated into health care payment reform; and
 - Any structural changes to the mental health system that would assist in achieving the vision of an integrated, holistic health care system.

S.133(continued)

- The **action plan** and **long-term vision evaluation** must also address the following subjects:
 - Potential benefits and costs of developing regional navigation & resource centers;
 - Effectiveness of DMH's care coordination team in providing access to and accountability for coordination and collaboration among hospitals and community partners;
 - Use and potential need to expand crisis diversion throughout the State;
 - Whether the components of 2012 Acts and Resolves No. 79 that were not fully implemented remain necessary and whether components fully implemented remain necessary;
 - Opportunities for and removal of barriers to implementing parity in the manner that individuals presenting at hospitals are received, regardless of whether for a psychiatric or physical condition;
 - The extent to which additional support services are needed for geriatric patients;
 - The extent to which additional services or facilities are need for forensic patients;
 - To the extent the analysis indicates need for additional units or facilities; and
 - How DAs/SSAs fund emergency services to ensure efficiency and availability to all individual's within a catchment area.

S.133(continued)

- The Secretary, in collaboration with the Commissioner and Chief Superior Judge, must submit a report to the General Assembly by **December 15, 2017** regarding role of involuntary treatment and medication in emergency department wait times, including:
 - concerns arising from judicial timelines and processes; and
 - the interplay between staff and patient rights.
- Vermont Legal Aid, Disability Rights Vermont, and Vermont Psychiatric Survivors may submit a response to the Secretary's report by **January 15, 2018**.
- DMH must issue a RFI for a longitudinal study comparing outcomes of patients who received court-ordered medications while hospitalized with those patients who did not receive court-ordered medication while hospitalized.

S.133 (continued)

- Other provisions of note:
 - Secretary is required to develop a plan to integrate multiple sources of payments to DAs/SSAs
 - Mental Health, Developmental Disabilities, and Substance Use Disorder Workforce Study Committee is created to examine best practices for training, recruiting, & retaining providers
 - Director of Professional Regulation must engage other states in a discussion of the creation of national standards for the regulation & licensing of mental health professionals
 - Secretary is responsible for establishing rates of payments for DAs/SSAs that are reasonable & adequate to achieve required outcomes for designated populations
 - Rates *shall* be adjusted to account for reasonable cost of any government mandate and changes in reasonable cost of goods and services of DAs/SSAs
 - Rates *may* be adjusted to account for geographic differences in wages, benefits, housing, and real estate costs
 - Commissioner of Human Resources must consult with BlueCross BlueShield of Vermont & Vermont Care Partners regarding the inclusion of DAs/SSAs in the State employees' health benefit plan

Other acts related to mental health

- Act **78**, An act relating to offenders with mental illness, inmate records, and inmate services
- Act **80** (§§ 23-24), which incorporates H.197, An act relating to mental health parity for workers' compensation