



LHA IMPACT LAW BRIEF

9521 Brookline Avenue, Baton Rouge, LA | Phone (225) 928-0026 | Fax (225) 923-1004 | www.lhaonline.org

Louisiana Hospital Association

Volume 29, No. 7

August 2014

Notices:

- **ARTICLE SUBMISSION:** The LHA Society of Hospital Attorneys encourages its members to submit articles on topics of interest. Writing an article that is published in *Lawbrief* is a great way to get your name out in the healthcare community and advertise your knowledge. If you have written an article and would like to have it considered for publication in *Lawbrief*, please email it in Word format (no pdfs please) to Angela Lockhart at alockhart@lhaonline.org.
- **HEALTH LAW SYMPOSIUM:** Mark your calendars for LHA's 25th Annual Health Law Symposium, which will be held Nov. 5 and 6, 2014 at the LHA Conference Center in Baton Rouge. The Health Law Symposium is the most comprehensive program for healthcare law practitioners featuring materials on important health law topics from leading experts. **Registration Information is coming soon!**

Articles:

- **Washington State Court Holds Psychiatric Boarding Unlawful, and State Scrambles to Comply with New Mandate**

Washington State Court Holds Psychiatric Boarding Unlawful, and State Scrambles to Comply with New Mandate

By: *Emily Black Grey*

On August 7, 2014, the Washington State Supreme Court held the hospital practice of "psychiatric boarding" illegal, finding that involuntarily committed psychiatric patients must receive mental health treatment, rather than merely being held in a hospital. See *Detention of D.W. v. Department of Social and Health Services*, --- P.3d ----, 2014 WL 3882472 (Wash. 2014). The state is now scrambling to comply, which includes spending as much as \$30 million to add more psychiatric evaluation and treatment beds.

The background of the case begins with a 1973 Washington statute, which requires that persons suffering from a mental disorder who are involuntarily detained shall be treated in a "certified treatment facility" certified by the state. Further, a state regulation provides that, at the discretion of the Mental Health Division, an exception can be granted to allow treatment in a non-certified facility pursuant to a request for a "single bed certification." To obtain this exception, the hospital contacts the division and requests the exception by, among other criteria, describing how the patient requires services that are not available at a certified facility or a state psychiatric hospital. (WAC 388-865-0526).



Louisiana Hospital Association • 9521 Brookline Avenue
Baton Rouge, LA 70809-1431 • (225) 928-0026 • Fax (225) 923-1004 • www.LHAOnline.org

With this regulatory framework, hospitals would contact the State Mental Health Division indicating that there were no psychiatric beds available at certified facilities and accordingly ask for a single bed certification. The Division would approve the request without necessarily inquiring further about whether there was a medical justification for involuntarily detaining the individual or about the treatment to be provided, if any.

In February 2013, a lawsuit was filed by individuals affected by this type of psychiatric boarding against the state Department of Social Services and Pierce County. The plaintiffs asserted their rights under federal due process requirements and Washington state law to treatment in a psychiatric facility. The defendants' arguments focused on the lack of available psychiatric beds available and practices necessitated by the critical shortage. Notably, at the time of the oral argument before the state supreme court, there were approximately 200 patients held in hospitals pursuant to a single bed certification.

In a unanimous, 9-0 decision, the Washington Supreme Court agreed with the plaintiffs, finding the practice of psychiatric boarding unlawful. In its analysis, the court considered the state regulation, noting that the purpose of the single bed certification was to address instances where needed services (such as dialysis or chemical dependency treatment) were unavailable at an evaluation and treatment center, such that treatment at another facility was medically indicated. Single bed certification, the court found, is not appropriate merely because there is no room at a certified facility.

This is believed to be the first time an appellate court has addressed the issue of psychiatric boarding. The ruling is set to go into effect on Wednesday, August 27, 2014. The delay was intended to give the state time to comply. In response, the state has planned to add more psychiatric beds to hospitals around the state, noting that it will cost the underfunded mental health system tens of millions of dollars. Governor Jay Inslee has reportedly approved spending as much as \$30 million to start meeting the court order to add more beds. Meanwhile, the state Attorney General has filed a motion with the court asking for a delay of the effect of its decision by 120 days to allow the state to implement a plan to ensure alternative care is available. Hospitals around the country will be watching with interest as events unfold, as a lack of psychiatric beds is certainly not a problem which is limited to Washington State.

Emily Black Grey is a partner in the Baton Rouge office of Breazeale, Sachse and Wilson LLP and is the Manager of its Healthcare Team.

DISCLAIMER: Any views or opinions presented in this newsletter are solely those of the author and do not necessarily represent those of the Louisiana Hospital Association. The Louisiana Hospital Association accepts no liability for the content of this newsletter or for the consequences of any actions taken based on the information. Hospitals and physicians seeking specific legal advice should consult a qualified attorney.

If you would like to unsubscribe from LHA's electronic newsletters, e-mail Angela Lockhart at alockhart@lhaonline.org with "unsubscribe from LHA newsletters" in the subject line.

If you did not receive this e-mail directly and would like to be placed on our e-IMPACT mailing list, send your name, title, and hospital or organization name, along with your e-mail address, to Angela Lockhart at alockhart@lhaonline.org with "add me to e-IMPACT mailing list" in the subject line.