



VIRGINIA COLLEGE OF EMERGENCY PHYSICIANS

Involuntary Civil Commitment in Virginia: Impediments to Emergency Patient Care and Recommendations for Change

The Virginia College of Emergency Physicians (VACEP) is deeply concerned with the impediments to emergency care for the Commonwealth's citizens in mental health crises that threaten our patients' and the public's safety.

VACEP finds the civil commitment processes as practiced in the state of Virginia inadequate in providing effective solutions and delivery of mental health care, particularly for patients in emergency mental health crises. It is from this perspective we have considered the Virginia civil commitment process as fundamentally flawed in its ability to provide timely emergency patient care and ensure public safety. We believe the inadequacy of the Virginia's civil commitment process has, and will continue to foster incidents of harm to patients, health care workers and the public at large.

VACEP supports efforts by the Commonwealth to improve the care delivered to mentally ill patients. As patient & public safety advocates, we offer our experience to assist in improving health care services to the patients with mental illness while simultaneously ensuring public safety.

We are very appreciative of the civil commitment process reports forwarded by the Commission on Mental Health Reform, the Governor's Report of the Virginia Tech Review Panel and the House Committee on Health Welfare and Institutions (HWI). VACEP agrees with the Report of the Virginia Tech Review Panel Summary Recommendation #5 (page 2) which states:

“Virginia’s mental health laws are flawed and services for mental health users are inadequate... The involuntary commitment process is challenged by unrealistic time constraints, lack of critical psychiatric data and collateral information, and barriers (perceived or real) to open communication among key professionals.”

Although some of the current observations of system failures were identified in the various investigations of the mental health process, we wish to specifically address the impediments to emergency medical aspects of patient care and public safety and recommend potential solutions.

(1) **PROBLEM:** The system fails to recognize mental health emergencies as an emergency medical condition requiring immediate emergency treatment.

- **SOLUTION:** Recognize mental health emergencies as an emergency medical condition requiring immediate emergency treatment by qualified physicians. Involvement of a state designated agency represents a delay in the emergency health care delivery system and impairs patient access to a medical screening examination.

(2) **PROBLEM:** Failure to designate qualified medical professionals, most notably, emergency medicine physicians, with a defined role in the commitment process.

- **SOLUTION:** Recognize emergency physicians as qualified to initiate an emergency involuntary civil commitment order without delay or interference of a state designated agency.

(3) **PROBLEM:** Denies a medical screening examination to an unstable emergency patient based on a community service board member's opinion to offer service. Only licensed medical physicians should

provide a medical screening examination under EMTALA.

- **SOLUTION:** Designate an emergency physician's medical opinion along with a qualified psychiatrist's opinion as the only opinions necessary for emergency involuntary civil commitment.

(4) **PROBLEM:** Virginia's law fails to clarify commitment standards beyond the term "imminent danger".

- **SOLUTION:** Designate an emergency involuntary civil commitment limit of 48 hours after initiation of medical treatment. After 48 hours, then a secondary assessment by a licensed psychiatrist and/or designated community service board designee can be implemented.

(5) **PROBLEM:** CSB personnel often decline TDO designation in avoidance of mandated placement concerns which may be burdensome.

- **SOLUTION:** Involuntary commitment decision requirements should be separated from the issue of available treatment capacity.

(6) **PROBLEM:** Failure of the CSB to avoid discrimination in determining

the initiation or issuance of a TDO/ECO.

- **SOLUTION:** Avoid discrimination of health care services to patients who may have a pre-existing condition, i.e. the mentally retarded.

(7) **PROBLEM:** It is not efficient to require law enforcement personnel to preside over the observation or transportation of a patient with a psychiatric medical condition.

- **SOLUTION:** Law enforcement personnel would be better utilized in providing law enforcement rather than oversight and transportation of mental health patients to health care facilities. Law enforcement should be used for patient safety or public safety needs. When necessary, mental health patients should remain under an involuntary civil commitment status through the transportation period.

(8) **PROBLEM:** Failure to provide the emergency physician safe harbor from any professional or financial liability or culpability for the mandated treatment (or lack of treatment) decision of the CSB or magistrate.

- **SOLUTION:** Emergency physicians should be offered safe harbor from liability in initiating involuntary commitment orders.

(9) **PROBLEM:** CSB treatment decisions are made independently and sometimes contrary to the attending emergency physician.

- **SOLUTION:** Recognize emergency physicians as qualified to initiate an emergency commitment order without delay or interference from CSB.

VACEP has identified these specific areas as problematic in providing quality emergency mental health care. And through the work of our members, we offer solutions to fix the problems. We remain supportive of a safe environment in the emergency department for the patients and the public we serve.

References:

§ 37.2-808 and §37.2-809 of the (Virginia) **Magistrate Manual** (Revision 30) 9/1/2006.

James Stewart, III, Inspector General. **Investigation of April 16,2007 Critical Incident At Virginian Tech, Report # 140-07**, Office of the Inspector General for Mental Health, Mental Retardation & Substance Abuse Services.

Report of the Virginia Tech Review Panel, Presented to Governor Kaine, Commonwealth of Virginia, Panel Chair Col. Gerald Massengill, August 2007.

Office of the Attorney General Opinion on **Transportation Under ECO's and TDO's**, L-193, (§37.1-67.1).