

# LEGAL ISSUES IN CRISIS SERVICES

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**Dr. Pinals consults and advises to state and other government entities as well as organizations in addition to her teaching role. The views in this report do not necessarily reflect those of any governmental or other entity with whom she is affiliated.**

# Before COVID-19

- ❖ Release of the National Guidelines for Behavioral Health Crisis Care Best Practice Toolkit by SAMHSA Feb 2020

# Person-Centered with Possible Voluntary and Involuntary Holds

- Civil Commitment
- Assisted Outpatient Treatment

# Decision Supports and the Role of Guardians

- Decision-making considerations in crisis contexts
  - Carve outs for guardians regarding psychiatric treatment
  - Carve outs for guardians regarding psychiatric hospitalization
- Psychiatric Advance Directives

# Restraint and Seclusion

- Crisis services leadership: commitment to prevention and elimination strategies in all contexts
- Intervention of last resort per CMS
- Data, definitions, and monitoring
- Trauma-informed care and principles as a way of assisting to achieve greater voluntary engagement

# Confidentiality

- HIPAA, 42 CFR Part 2
- “Duty to protect”
- Mandated reporting

# Red Flag and Extreme Risk Protection Orders

- Red flag laws, gun violence restraining orders, extreme risk protection orders
- Firearms and suicide risk vs violence risk
- Importance of clinical risk assessment
- With gun removal
  - Individuals may be taken to hospital
  - Relief from disability laws may lead to seeking out a mental health assessment



# Law Enforcement and the Criminal-Legal System

- Responses:
  - Mental health based mental health response (“co-response” type)
  - Law enforcement-based mental health response (“co-response” type)
  - Law enforcement specialized law enforcement response
- Diversion opportunities
- Hubs that are police friendly
- Can be utilized by those in the competency systems
- Possible re-balancing of increasing behavioral health responses while decreasing law enforcement involvement

# Crisis Centers and EMTALA

- 1986 law meant to guarantee non-discriminatory public access to emergency care regardless of an individual's ability to pay
- Requires stabilization prior to transfer
  - Psychiatric stabilization and transfer considerations for crisis service providers who fall under EMTALA provisions (and generally)
- Usual requirements:
  - Licensed by the state as a hospital
  - Dedicated emergency department
  - Medicare participant

# COVID-19 and Legal Issues in Crisis Services

- Shift to video visitation
- Need to ensure proper assessments with clinical judgment for when more acute intervention, face to face or other means is needed.
- Proper access to PPE, testing to reduce viral spread especially when and where in the crisis continuum in-person contacts are occurring
- Careful application of infection control measures for individuals visiting crisis services

# Risk Management and Liability

- Concerns about malpractice
- Need for documentation
- Risk assessment capacity
- Workforce development

# Comments? Questions? Feedback?



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