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Changes to Idaho's 'Mental Hold' Laws

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Insight — 8/13/2013

Idaho's "24-hour mental hold" law was recently amended to (1) allow midlevels as well as physicians to initiate 24-hour mental holds, and (2) to clarify mental hold situations involving minors.

24-Hour Mental Holds. Idaho Code § 66-326(1) allows a physician, physician's assistant, or advance practice registered nurse practicing at the hospital (collectively "practitioner") to detain a person who presents at the hospital if the practitioner "has reason to believe that the person is gravely disabled due to mental illness or the person's continued liberty poses an imminent danger to that person or others, as evidenced by a threat of substantial physical harm." "Mental illness" means "a substantial disorder of thought, mood, perception, orientation, or memory, which grossly impairs judgment, behavior, capacity to recognize and adapt to reality [that] requires care and treatment at a facility or through outpatient treatment." (I.C. § 66-317(12)).

"Gravely disabled" means a person who, as the result of mental illness, is:

(a) In danger of serious physical harm due to the person's inability to provide for any of his own basic personal needs, such as nourishment, or essential clothing, medical care, shelter or safety; or

(b) Lacking insight into his need for treatment and is unable or unwilling to comply with treatment and, based on his psychiatric history, clinical observation or other clinical evidence, if he does not receive and comply with treatment, there is a substantial risk he will continue to physically, emotionally or mentally deteriorate to the point that the person will, in the reasonably near future, be in danger of serious physical harm due to the person's inability to provide for any of his own basic personal needs such as nourishment, essential clothing, medical care, shelter or safety.

(I.C. § 66-317(13)). The person may be detained for up to 24 hours while steps are taken by local authorities to initiate proceedings for a designated examination and possible commitment. (I.C. § 66-326). Significantly, the statute only applies to detention for mental healthcare; it does not apply to medical conditions. If the patient requires care for a medical condition, the general rules for consent for medical treatment should be followed, including obtaining consent from a surrogate decisionmaker if the patient lacks capacity to make their own healthcare decisions. (See I.C. §§ 39-

4503 and 39-4504).

Detention of Minors. Although § 66-326 is not expressly limited to adults, some prosecutors have taken the position that § 16-2411 applies to detention of minors instead of § 66-326. Accordingly, the Idaho legislature amended § 16-2411 to allow a "physician, physician's assistant, or advance practice registered nurse" practicing in a hospital (collectively "practitioner") to detain an unemancipated minor ("child") if the practitioner

has probable cause to believe that the child is suffering from a serious emotional disturbance as a result of which he is likely to cause harm to himself or others or is manifestly unable to preserve his health or safety with the supports and assistance available to him and that immediate detention and treatment is necessary to prevent harm to the child or others.

(I.C. § 16-2411(2)). Upon detention, the hospital:

shall notify the parent or legal guardian, if known, as soon as possible and shall document in the patient's chart the efforts to contact the parent or legal guardian. If the parent or legal guardian cannot be located or contacted, the health care professional shall cause a report to be filed as soon as possible and in no case later than twenty-four (24) hours with the Idaho Department of Health and Welfare or an appropriate law enforcement agency. The child may not be detained against the parent or legal guardian's explicit direction unless the child is taken into protective custody [by a peace officer] pursuant to [I.C. § 16-2411(1)], except that the child may be detained for a reasonable period of time necessary for a peace officer to be summoned to the hospital to make a determination under [§ 16-2411(1) about whether the child should be taken into protective custody].

Transfer to Another Facility. Sections 66-326 and 16-2411 both allow a hospital to transfer a detained patient to another appropriate facility if the hospital lacks the resources to care for the detained person. (I.C. §§ 66-326(6), and 16-2411(2); see also § 66-324(3)). The transferring hospital must still satisfy its EMTALA transfer requirements, e.g., provide appropriate care pending a transfer, and ensure the receiving facility has agreed to accept the transfer. (See 42 C.F.R. § 489.24).

Limited Immunity. Section 66-341 grants hospitals and practitioners limited immunity for actions taken under § 66-326 if "performed according to the [statutory] procedures ... in good faith and without gross negligence." (I.C. § 66-341).

72-Hour Administrative Holds. The recent amendments do not affect other laws that allow mental health hospitals to place "voluntary patients" on an involuntary 72-hour administrative hold if certain conditions are satisfied. In general, to initiate the 72-hour administrative hold, the hospital

must be licensed or otherwise in a position to admit patients for voluntary mental health care (e.g., a psychiatric hospital); the hospital must have actually admitted the patient as a voluntary patient under I.C. § 66-318; and the patient must seek to leave the facility. (I.C. § 66-320(1)).

For questions regarding this update, please contact

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