Policy Analysis: Tennessee Declarations for Mental Health Treatment

Tennessee Annotated Code, Title 33, Chapter 6, Part 10

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Introduction

Mental health disorders are significant issues that affect majority of individuals in one way or another. Some people with mental health disorders can be functional in society their entire lives, while others can have more significant issues and impairments due to their illness. Mental Health treatment is still considerably lacking, and many individuals never receive adequate care for their illness.

Social Problem Addressed

From 1960-1980 there was a significant event that occurred in mental health history called “deinstitutionalization” where virtually all state-run mental health hospitals were shut down due to protests regarding the condition of patients living in them (Earley, 2006). Many individuals ended up homeless, but treatment could not be forced on them. This had a ripple effect that lead to the “revolving door” system of individuals with mental health rotating through emergency rooms and jails/prisons, without getting proper long-term treatment (Earley, 2006). The Tennessee Declaration for Mental Health Treatment (DMHT) is a step in the right direction and is a solution that the Tennessee State Government has found to provide mental health services (inpatient up to 15 days, and long-term outpatient) to clients while also respecting and promoting self-determination in their care.

Population Affected

All individuals with mental health issues residing in Tennessee are affected by this policy and can request a DMHT. However, individuals who are prone to psychotic episodes (such as schizophrenia, bipolar disorder, PTSD, etc.) are especially affected by this policy because it allows them to decide their treatment for these psychotic episodes when they have a more stable

mindset. This policy also affects mental health providers, as it requires them to have policies and procedures in place to be able to abide by the clients' wishes in their declarations.

Description of the Policy

The Tennessee DMHT authorizes an individual suffering with mental health disorders and his/her caregiver to create a legal document that outlines the treatment he/she should receive if he/she has a mental health crisis. The policy itself outlines the definitions, duration of the declaration, signatures required, effective dates and applicability of the declaration, care contrary to the declaration in emergency situations, declaration superior to powers of conservator, requirements for mental health care providers to receive copies, effect of declarations executed in other states, incorporation into a durable power of attorney for health care, immunity for actions taken or not taken in good faith, admission to treatment not to be conditioned on creating a declaration, penalty for destruction or alteration of the declaration, standard form for the declaration, and requirements for providers to have written policies and procedures relating to the declarations (Tennessee Declarations for Mental Health Treatment, 2016). It allows individuals in a mental health crisis to receive treatment that they wish to receive rather than not receiving treatment at all or being forced to receive treatment that they do not want. However, it is not required for individuals to fill out the Declaration, and it is only provided upon request.

Impact Analysis

The Tennessee DMHT was only recently enacted four years ago, thus there is not as much research on the impact it has had with clients. However, according to the Substance Abuse and Mental Health Services Administration (SAMHSA), Psychiatric Advance Directives (PADs) have existed in different states since the 1990s and have similar underlying principles to the

DMHT. In 2006, the Center for Medicare and Medicaid Services (CMS) required that PADs be included in patient treatment, but this can only be required for patients who have Medicare and/or Medicaid insurance. Many states have not implemented PADs at this time, and only follow the basic recommendations for care (SAMHSA, 2018).

Research has shown many benefits to PADs including increased communication with treatment teams, fewer necessary crisis interventions, and increased perception of needs being met. It was also found that participants who completed a PAD had less police transport, involuntary commitment, seclusion, and restraints (SAMHSA, 2018). Yet despite the excellent benefits of PADs, there are a few barriers that can arise. These barriers include definitions of functional impairment, legal burden to clinicians, competing resources, lack of caretakers for clients, and lack of awareness of PADs (SAMHSA, 2018). A community-based survey showed that only 5% of individuals completed a PAD and the other 95% of individuals did not know the PAD existed, did not understand what the PAD provided, and/or were unable to obtain help filling out the PAD (Monahan, Swartz, & Bonnie, 2003).

Recommended Changes

The Tennessee DMHT is a significant steppingstone in reforming mental health in the community, but still has some changes that are needed. First, the main problem found in research regarding PADs was lack of access, knowledge, and comprehension of the PAD with clients. This policy does require providers to have information materials regarding the DMHT, but I would take that a step further and require them to be responsible for filling out a DMHT with clients. I recommend the policy outline that mental health providers, primary care physicians, emergency care providers, and/or social workers should be required to fill out a DMHT with clients upon diagnosis of a mental disorder and must document whether the client received or

declined a DMHT, or that the provider has specifically referred the client to someone who can help fill out the DMHT.

The policy also states that admission to treatment cannot be conditioned on whether a person has created a declaration for mental health treatment. I think this should be left in the policy but change phrasing to reflect that a patient cannot be denied services if he/she refuses or declines a DMHT, rather than whether he/she has filled one out. These changes would hold providers accountable and allow patients to have better access to the DMHT.

The Advance Instructions for Mental Health Treatment (AIMHT) is North Carolina's equivalent to the DMHT, but also includes the addition that a client's provider can refuse to provide the preferences in the AIMHT, but must notify the client immediately upon receiving a copy of the client's AIMHT (Bazelon Center for Mental Health Law, 2002). I recommend this be carried over into the Tennessee DMHT as well, to protect providers' rights to deny services if they believe it would be harmful to the client or is out of their expertise. The urgency in notifying the client ahead of time that they will be unable to provide those services allows the client to discuss and adjust his/her DMHT or find a different provider who is comfortable with providing the services outlined.

My last recommendation would be to require implementation of PADs in all states, whether at a federal or state level. For example, Georgia currently does not have a PAD and it would be beneficial to create a policy like the Tennessee DMHT for Georgia as well.

Conclusion

The Tennessee DMHT is hopefully a way of providing services to clients with mental health issues without taking away their self-determination. Different states have different requirements for the PADs, and it is important to research all of them to find what works best. So far, the Tennessee DMHT has not had enough time to truly research long-term effects of the policy, but much can be learned from other states' implementations of their versions of PADs. PADs should be required for each state, and mental health providers, social workers, primary care physicians, and emergency providers should be required to help patients fill out PADs. Providers should, however, be allowed to decline providing specific services outlined in a patient's DMHT but should notify the patient so he/she can find a different provider or change his/her DMHT after discussion. Overall, PADs could be ground-breakers in mental health treatment, and the Tennessee DMHT seems promising.

References

Bazelon Center for Mental Health Law (2002). Power in planning: Self-determination through psychiatric advance directives. https://networkofcare.org/library/advstatelaws.pdf

Monahan, J., Swartz, M., and Bonnie, R. J. (2003). Mandated treatment in the community for people with mental disorders. *Health Affiliations, 22*(5), 28-38. doi: 10.1377/hlthaff.22.5.28

Substance Abuse and Mental Health Services Administration (2019). *A practical guide to psychiatric advance directives.* U.S. Department of Health and Human Services. https://www.samhsa.gov/sites/default/files/a_practical_guide_to_psychiatric_advance_directives.pdf

Tennessee Declarations for Mental Health Treatment, Tn. Code 33 § 6 (2016). https://law.justia.com/codes/tennessee/2016/title-33/chapter-6/part-10