Implications of the NY SAFE ACT for the DCS

New York State Conference of Local Mental Hygiene Directors

Jed B. Wolkenbreit, Counsel
Governor Cuomo signed the new law on January 15, 2013 saying:

“The new law will limit gun violence through common sense, reasonable reforms that include addressing the risks posed by mentally ill people who have access to guns and banning high capacity magazines and lethal assault weapon”
It is basically a Gun Control Bill

From our perspective the Act:

- Adds to the duties of a DCS.
- Changes the AOT Law.
- Changes regarding discharge of inmates from Central NY Psychiatric Center.
- Became effective March 16, 2013.
What are the changes in the Duties of the DCS?

- Duty to report to DCJS based on report of MHP.
- Duties regarding transfer of an AOT order.
- Duty to evaluate prior to end of AOT order.
What is the duty to report?

B) NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, WHEN A MENTAL HEALTH PROFESSIONAL CURRENTLY PROVIDING TREATMENT SERVICES TO A PERSON DETERMINES, IN THE EXERCISE OF REASONABLE PROFESSIONAL JUDGMENT, THAT SUCH PERSON IS LIKELY TO ENGAGE IN CONDUCT THAT WOULD RESULT IN SERIOUS HARM TO SELF OR OTHERS, HE OR SHE SHALL BE REQUIRED TO REPORT, AS SOON AS PRACTICABLE, TO THE DIRECTOR OF COMMUNITY SERVICES, OR THE DIRECTOR'S DESIGNEE, WHO SHALL REPORT TO THE DIVISION OF CRIMINAL JUSTICE SERVICES WHENEVER HE OR SHE AGREES THAT THE PERSON IS LIKELY TO ENGAGE IN SUCH CONDUCT. INFORMATION TRANSMITTED TO THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL BE LIMITED TO NAMES AND OTHER NON-CLINICAL IDENTIFYING

What is the DCS’s duty?

- Report name and other Non-clinical information to DCJS if:
  - Receive report from TREATING Mental Health Professional (MHP)
  - MHP says that patient or client is likely to engage in CONDUCT that will result in serous harm to self or others
  - DCS agrees with report
MENTAL HEALTH PROFESSIONAL

REPORTS OF SUBSTANTIAL RISK OR THREAT OF HARM BY MENTAL HEALTH PROFESSIONALS

(A) FOR PURPOSES OF THIS SECTION, THE TERM "MENTAL HEALTH PROFESSIONAL" SHALL INCLUDE A PHYSICIAN, PSYCHOLOGIST, REGISTERED NURSE OR LICENSED CLINICAL SOCIAL WORKER

- Defines Mental Health Professional
  - Physician
  - Psychologist
  - Registered Nurse
  - LCSW

- Does NOT include LMHP or LMSW or anyone else.
Questions
Answers
Q- Who must report?
A- MHP reports to DCS or Designee. DCS or Designee reports to DCJS

Q- When is report due?
A- MHP must report to DCS as soon as practicable. No specific time limit for DCS reporting to DCJS.

Q- What gets reported to DCJS?
A- Name and Other non clinical Information.

Q- What happens to information?
A- It will go in database but must be destroyed 5 years after receipt or pursuant to court order.

Q- Is this Public information?
A- No. It is not considered a public record for FOIL purposes.
Limitations on Duty to Report

- C) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE A MENTAL HEALTH PROFESSIONAL TO TAKE ANY ACTION WHICH, IN THE EXERCISE OF REASONABLE PROFESSIONAL JUDGMENT, WOULD ENDANGER SUCH MENTAL HEALTH PROFESSIONAL OR INCREASE THE DANGER TO A POTENTIAL VICTIM OR VICTIMS.

- (D) THE DECISION OF A MENTAL HEALTH PROFESSIONAL TO DISCLOSE OR NOT TO DISCLOSE IN ACCORDANCE WITH THIS SECTION, WHEN MADE REASONABLY AND IN GOOD FAITH, SHALL NOT BE THE BASIS FOR ANY CIVIL OR CRIMINAL LIABILITY OF SUCH MENTAL HEALTH PROFESSIONAL.

- When is MHP not required to report?
  - IF MHP or potential victim is endangered.

- Is MHP liable if they don’t report?
  - Not if decision is reasonable and made in good faith

- NO Civil or Criminal Liability.
Similar but not the Same as current MHL 9.45 language

“reports to him or her that such person has a mental illness for which *immediate* care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or herself or others.”

*9.46 does not use the words immediate or imminent
Duties to Evaluate

- The Director of AOT has new duties under MHL '9.48.
- The DCS has a new duty under MHL '9.47.
AOT Director’s Duty to Evaluate

Amends Section 9.48

- (c) Directors of assisted outpatient treatment programs providing services described in paragraph one of subdivision (a) of section 9.60 of this article pursuant to any court order issued under such section shall evaluate the need for ongoing assisted outpatient treatment pursuant to subdivision (k) of section 9.60 of this article prior to the expiration of any assisted outpatient treatment order; and shall notify the director of community services of the new county of residence when he or she has reason to believe that an assisted outpatient has or will change his or her county of residence during the pendency of an assisted outpatient treatment order. Upon such change of residence, the director of the new county of residence shall become the appropriate director, as such term is defined in section 9.60 of this article.

Director of AOT must:

- Evaluate need for ongoing AOT prior to expiration of original order.
- Shall notify DCS of new county of residence when he or she knows or has reason to believe that the AO has moved or will move.
- Upon change of residence the DCS of New County becomes the “Appropriate Director”.
New Evaluation Duty of DCS

- ensuring evaluation of an AO for continuation prior to the expiration of any AOT order if DCS is either:
  - The Responsible DCS under the original order OR
  - Has become the Appropriate Director because the AO has changed residence while under the order.
Is evaluation defined?

- Not defined in the statute
- Although Physician review is NOT required by the new law:
  - A court may require such in order to agree to extension of order
  - Physician sign off would be a “good idea” before making a decision not to extend.
IF DCS determines:

- that AOT criteria continue to be met  OR

- DCS has made appropriate attempts to, but has not been successful in eliciting, the cooperation of the subject to submit to an examination, within thirty days prior to the expiration of an order of assisted outpatient treatment.

THEN such director may petition the court to order continued assisted outpatient treatment.
Transfer duties

- Both the Director of the AOT program and the DCS have an affirmative duty to notify the director of community services of the new county of residence when he or she has reason to believe that an assisted outpatient has or will change his or her county of residence during the pendency of an assisted outpatient treatment order.
Changes to MHL '9.60- AOT

- Adds definition of “Appropriate Director” - the DCS of the County where AO resides even if not the county from which order issued.
- Allows original order for period “not to exceed one year” instead of six months.
- Extends AOT law until June 30, 2017.
...changes in 9.60 continued

- Provides that it is the **APPROPRIATE** director who must provide or arrange for all categories of assisted outpatient treatment throughout the period of the AOT order.
  - If the AO moves the responsibility moves with him/her.
  - This would apply to inmates discharged from CNY with an order resulting from a petition by the hospital director.
Before an inmate can be discharged from a state correctional facility from a hospital in the department of mental hygiene to the community:

- The director shall insure a clinical assessment for AOT

- If AOT criteria met either:
  - Petition for an AOT Order, OR
  - Report in writing to the Appropriate DCS
Q- Who has the duty to Assess?
A- The Director of Central New York Psychiatric Center. (The ONLY hospital meeting criteria)

Q- Who needs to be Assessed?
A- ONLY inmates committed to CNY Psych Center FROM STATE PRISONS who are about to be discharged TO THE COMMUNITY.

Q- When is the assessment required?
A- Within a Reasonable Time prior to Discharge.
Q: What is to be assessed?
A: A clinical Assessment to determine whether the inmate meets the criteria for AOT under MHL 9.60

Q: What if inmate meets criteria?
A: The Hospital Director can either:
- Petition the court for an AOT Order
- Report in writing to the DCS of the LGU where inmate is expected to reside who MAY conduct an investigation under 9.47.
Then what does the DCS do?

9.47 (b)(2) currently provides that a DCS is responsible for:

“conducting timely investigations of such reports and providing written notice upon the completion of investigations to reporting persons and program coordinators, appointed by the commissioner of mental health...”
So...

- If the investigation indicates that AOT is appropriate, the DCS should petition accordingly.
- If the Investigation indicates that AOT is not appropriate, then the person should be either referred to other appropriate services or otherwise treated in the same way as anyone else for whom AOT is not deemed appropriate.
Other provisions of NY SAFE ACT

- Data already collected by OMH which currently is transmitted to NICS will now also be transmitted to DCJS which can re-disclosed ONLY for purposes for determining if a gun license should be denied, revoked or suspended.

- Criteria for getting back a gun license must be added to the Certificate of Relief for Disability currently in place for both OMH and OPWDD [14 NYCRR Part 543 (OMH) and 14 NYCRR Part 643 (OPWDD)].
The executive law is amended to give DCJS the right to receive names and other non-clinical identifying information pursuant to section 9.46 of the mental hygiene law.

Section 33.13 of the mental hygiene law, is amended to exempt the information which the DCS must report to DCJS from the confidentiality rules and giving DCJS the right to receive such information.

Suggest that this exemption ONLY applies to reports from MHPs as defined in the statute.
What should you be doing in the next 60 Days

1) Develop a procedure for receiving reports from MHP, evaluating reports (including evaluating who the MHP is), and transmitting to DCJS when appropriate.

2) Communicate this policy to designees.

3) Develop procedure for notifying appropriate parties when an Assisted Outpatient relocates to another county.

4) Develop procedure for receiving an AO transferring from another county (e.g. assign case, evaluate applicability of treatment plan).

5) Develop procedure for evaluating AO prior to expiration of an order.
Questions:

Jed Wolkenbreit  jbw@clmhd.org
Kelly Hansen    kh@clmhd.org