

Testimony to Members of the Mental Health Services Working Group of the
Legislative Bipartisan Task Force

Tuesday, January 29, 2013

Senator Harp; Representative Wood; Members of the Working Group:

I appreciate this opportunity to engage in a brief discussion with you about the topic of Outpatient Commitment (OPC) as a method that is intended to leverage mental health treatment. This is, as you know well, a form of court-mandated outpatient treatment for individuals suffering from mental illness. I do not have to emphasize that this subject has been at the heart of an intense, passionate debate among members of many different constituencies in the United States and in both the lay and academic literature for many years.

I wish to enter the debate with the intent of clarifying a number of principles that all of us should consider as we think about this subject.

- The publicity surrounding New York's Kendra's Law has obscured the fact that the man who pushed Kendra Webdale to her death on the subway tracks on January 3, 1999 had been rebuffed by the mental health system in his efforts to seek treatment. So an OPC statute was not needed in that case. And nothing we know so far about the Newtown incident cries out for an OPC law.
- Media portrayals of the mentally ill tend to frame them as violent, which we all know is a distortion of reality.
- OPC is only one form of coercion (leveraged coercion) applied to individuals with mental disabilities living in the community. It is therefore crucial that we all reflect on our interest in having the mental health care system as devoid of coercion as possible. Certainly, we should appreciate the need to balance coercion with a commitment to patient autonomy and respect for the patient.
- It is difficult for us to understand and to discuss OPC thoughtfully because of the difficulties inherent in the definition. For example:
 - o (1) Swartz and Swanson's definition emphasizes certain points: the target population is ill; the population needs treatment that it won't seek voluntarily; proposed services will improve medical and social ills.
 - o (2) Another definition emphasizes: OPC is a legal tool that targets for treatment members of minority groups who are generally victims of social conditions. Thus OPC is primarily a means of social control.
 - o (3) Another definition posits the following: OPC is a legal method of ensuring that a certain defined class of patients is given priority in gaining access to scarce mental health and social service resources. Thus this group is moved to the front of the line for service.

- Hence, Definition #1 emphasizes treatment; #2 pushes social control and ultimately will concentrate on the needs of the broader society; and #3 prioritizes the needs of a class of patients caught in poverty, serious and chronic illness, and lacking a variety of social supports.
- Understanding the range of values and assumptions will also help us appreciate why the 45 or so states with OPC statutes engage in varying levels of their use.
 - It is hard to decide whether the primary intended beneficiary of OPC is the individual or society.
 - Is the emphasis on social control or on autonomy-enhancing community-based living?
 - Are we committed to the task of enhancing the patient's right to living in the community and enjoying the privileges of the average citizen in this democratic society? (Here I credit the thinking of Michael Rowe and his colleagues at Yale.)
- In addition, Swartz and Swanson concluded in their review of OPC that "OPC is not a substitute for comprehensive services". This conclusion was recently restated by Professor Richard Bonnie in testimony before the Governor's advisory commission on the incident in Newtown.
- A few last points deserve your attention:
 - OPC is not a magical tool. OPC statutes generally have no provision for use of involuntary medication.
 - Patients may refuse to conform to the dictates of the OPC treatment plan, with no serious consequences to follow.
 - The existing research findings do not confirm that OPC is uniformly beneficial.
 - There are some findings in OPC research suggesting that blacks are more commonly committed than whites. The meaning of this work is not yet clear. However, it deserves to be kept in mind.

I hope that I have given you all some matters to ponder. In that light, I believe that at this juncture in time, we do well to think about investing in our care system and enhancing it in creative steps. The more comprehensive the care system is, the less risk we will ultimately run, as we work hard to provide all our patients the chance to be full citizens who avail themselves of the privileges to be enjoyed in this democratic society. Thank you.

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