Emergency Department Boarding, Ethical Dilemmas, and How to Advocate for Clients in Crisis

June 15, 2024

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Elliot Pinsly, LCSW

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LEARNING OBJECTIVES

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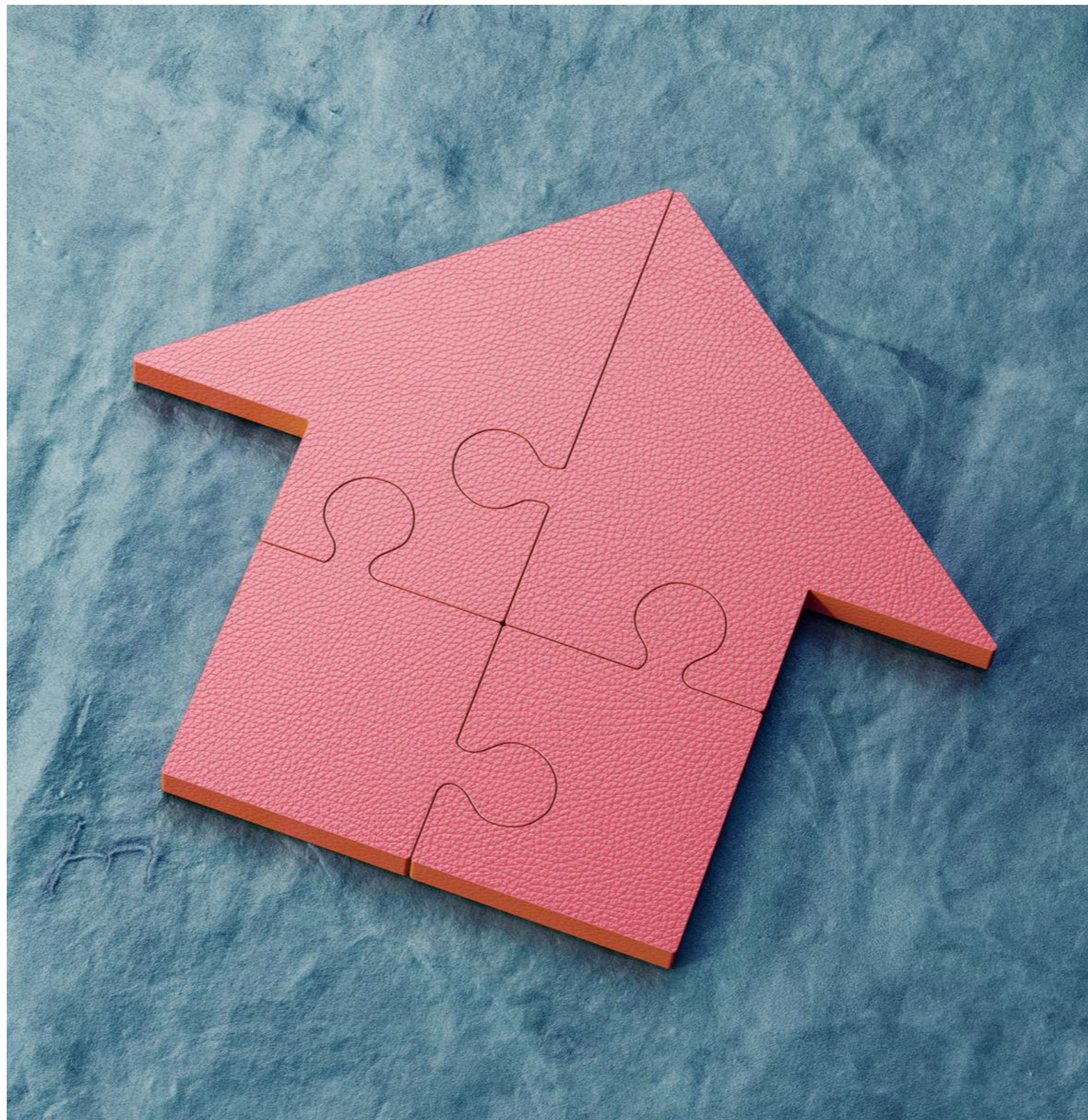

1. Explain the meaning of "emergency department (ED) boarding" and identify causes
2. Understand the potential adverse effects of ED boarding on clients
3. Identify ways to work through ED boarding ethical dilemmas and advocate for clients at individual and systems levels

ABOUT SUZANNE

Presenter info

- **Suzanne Blackwood, MS, LPC-MHSP** – practicing clinical counselor at “This Hope” Counseling in Woodbury, TN
- Chair of the TN Diversion Coalition’s Emergency Departments and EMS Committee
- A compassionate and savvy mental health advocate, at multiple levels
- Graduate of MTSU (BS in Journalism) and TSU (MS in Counseling Psychology)
- Previous roles include: clinical director at the Family Counseling Center of Middle Tennessee (Manchester); news reporter for The Tennessean
- Proud TLPCA member!

No conflicts of interest to report.

Suzanne is presenting in her TN Diversion Coalition role and not in any other capacity.

https://www.linkedin.com/in/suzanne-blackwood-7962b22/

HELEN'S STORY

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She was suicidal but waited days for a bed to open in a state psychiatric hospital

Lawmakers honor woman for sharing her mental health story

https://www.newschannel5.com/news/newschannel-5-investigates/emergency-rooms-becoming-the-dumping-ground-for-mentally-ill-who-often-wait-days-for-help

WHAT IS ED BOARDING?

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Emergency Department (ED) Boarding

- EDs often end up as the default for patients presenting with mental health crises and are experiencing an influx of millions of psychiatric patients each year, nationwide.
- Some patients may wait days, even weeks, in the ED before being admitted to a psychiatric hospital where they can receive treatment. This problem is known as “emergency department boarding,” or “ED boarding.”
- While there is no universally accepted length of stay that qualifies as ED boarding, the Joint Commission generally considers an ED stay of more than four (4) hours as “boarding.”
- ED boarding also occurs for patients with physical health needs, but our presentation focuses on mental health ED boarding.

Avg. ED boarding time in TN = **2 full days**

ACEP, 2015; Joint Commission, 2012; Nordstrom et al., 2019; Redinger et al., 2024; Tavernero, n.d., TDMHSAS testimony to TN General Assembly, 2024

ED BOARDING BACKSTORY

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Causes of ED boarding

- People often have nowhere else to go (or do not know about other available options)
  - Not enough funding for community-based services and voluntary alternatives
  - Insufficient access to and awareness of walk-in centers and CSUs
  - Transportation barriers
- Medical clearance protocols with little standardization
- Major mental health workforce shortages, at all levels
- State psychiatric hospital staffing issues and delays in processing admissions
- Reluctance of some private psychiatric facilities to accept to patients without insurance

"The problem of ED boarding stems ***not*** *– or not only – from a lack of inpatient beds"* – The Joint Commission

Patients being boarded in the ED often are the most in need of help

- Research has found patients are more likely to be boarded if they are uninsured, have severe and persistent symptoms, and/or have little to no social support.

ACEP, 2015; The Joint Commission, 2021; Nordstrom et al., 2019; Redinger et al., 2024; Tavernero, n.d.; TDMHSAS testimony to TN General Assembly, 2024

ADVERSE EFFECTS

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ED boarding is bad for patients

- Patients boarded in the ED for mental health reasons often fail to receive adequate, appropriate, and compassionate care.
- ED boarding can have a devastating effect on patients' physical & psychological wellbeing.
  - Hygiene and dietary needs are often neglected.
  - Patients are sometimes denied their regular medications prescribed by their PCPs, causing chronic medical conditions to flare up; medication errors can also occur.
  - Noisy, chaotic, and often over-crowded ED environments can increase anxiety and agitation.
  - ED boarding increases patient stress and trauma while delaying necessary mental health care
  - Patients are typically unable to get quality sleep, which can further exacerbate symptoms.
  - Patients are often isolated, having little social interaction.
  - Patients often report receiving little empathy and compassion while boarding.
- Patients boarded in the ED sometimes end up receiving no treatment at all.

Other negative impacts of ED boarding

- Makes ED overcrowding even worse, increasing wait times and delaying treatment for other ED patients

ACEP, 2015; Hepburn, 2019; Major et al., 2021; Nordstrom et al., 2019; The Joint Commission, 2021; Rheinberger et al., 2021; Simon et al., 2019; Tavernero, n.d.; Wan, 2022; Zeller, 2017

MAKING THINGS WORSE

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"You put them in a 10x10 room with just an examination table and a chair, and they are stuck there for days. Any sane person is going to act out...You put me in that room and you're going to see me act out and get arrested."

Chad Partin, Coffee County Sheriff, on ED boarding for patients with mental health issues

NEWS > NEWSCHANNEL 5 INVESTIGATES > BROKEN - MENTAL HEALTH CRISIS

'We cannot continue to lock these people up:' Sheriffs blast lack of treatment for mentally ill

911 calls reveal crisis inside Tennessee emergency rooms

Photo by: WTVF / Bob Stinnett

Our gift to the
Nashville communi

https://www.newschannel5.com/news/newschannel-5-investigates/broken-mental-health-crisis/we-cannot-continue-to-lock-these-people-up-sheriffs-blast-lack-of-treatment-for-mentally-ill

POSITION STATEMENTS

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American Psychiatric Association (APA)

- APA's position on Emergency Department Boarding:
  - *"**Prolonged boarding of patients with acute mental illness in emergency departments leads to inadequate care, may be harmful, and is unacceptable**. All efforts should be made to help place each patient at the appropriate level of psychiatric care. When boarding is unavoidable, the emergency department should **ensure the patient is receiving active, appropriate, and humane mental health treatment in a safe setting** with periodic re-evaluation for any emerging physical health problems. Depending on the needs of each patient, this treatment may include appropriate interventions for agitation and other acute symptoms, supportive therapy, and initiation of medications for their primary mental illness. **Attention should also be paid to patient comfort and the ED staff should provide regular updates for the patient and family**. All emergency settings should have access to psychiatrists, on-site or via telepsychiatry, to assist in conducting an adequate evaluation and in providing optimal care."*

American College of Emergency Physicians (ACEP)

- From an ACEP Ethics Committee paper in 2019:
  - *The frequent ED boarding of patients with psychiatric and behavioral health complaints is troubling. Without concerted effort, **these patients are likely to have prolonged stays that are inefficient at best and harmful at worst**.*

Nordstrom et al., 2016; https://www.acep.org/siteassets/new-pdfs/information-and-resource-papers/the-impact-of-psychiatric-boarders-on-the-emergency-department.pdf

ALTERNATIVES TO THE ED

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Consider all less restrictive options first

- The individual clinician will need to assess the risk level to determine whether there is a need to involve Mobile Crisis and/or have the client go to the ED.
- Assess what is in the client's best interest, taking into account the client's preferences.
- Whenever possible, consider referring the client to a 24/7 Crisis Walk-in Center – if safe, reliable transportation can be arranged and if such services are available nearby.
- Consider working with the client directly to develop a safety plan that involves the client's support system (family, friends, etc.), coping strategies, and so on.
  - Important to consider family dynamics and the functionality of the family system so as not to put the client at further risk of harm!
- Connect with other members of the client's treatment team, e.g., care coordinator, case manager, certified peer recovery specialist, etc.
- All voluntary alternatives should be considered first, as voluntary trips to the ED often become involuntary detention situations due to distress and panic from ED boarding.

ACA CODE OF ETHICS

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- A.1.a. Primary Responsibility
  - The primary responsibility of counselors is to respect the dignity and promote the welfare of clients.
- A.1.d. Support Network Involvement
  - Counselors recognize that support networks hold various meanings in the lives of clients and consider enlisting the support, understanding, and involvement of others (e.g., religious/spiritual/community leaders, family members, friends) as positive resources, when appropriate, with client consent.
- A.4.a. Avoiding Harm and Imposing Values
  - Counselors act to avoid harming their clients, trainees, and research participants and to minimize or to remedy unavoidable or unanticipated harm.
- A.7.a. Advocacy
  - When appropriate, counselors advocate at individual, group, institutional, and societal levels to address potential barriers and obstacles that inhibit access/or the growth and development of clients.
- A.7.b. Confidentiality and Advocacy
  - Counselors obtain client consent prior to engaging in advocacy efforts on behalf of an identifiable client to improve the provision of services and to work toward removal of systemic barriers or obstacles that inhibit client access, growth and development.

American Counseling Association (ACA), 2014

PLAN AHEAD: RELEASES

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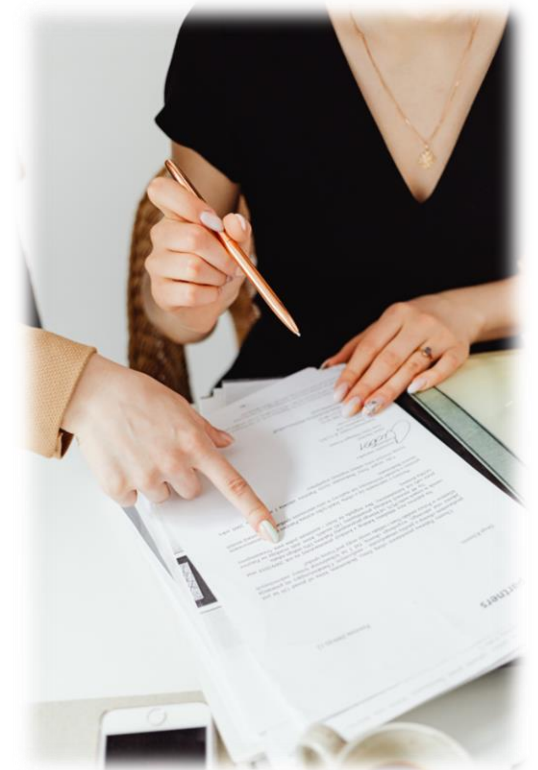
If the clinician decides to involve Mobile Crisis and/or send the client to the emergency department:

- Obtain Releases of Information (ROI) – with client consent, have them sign ROI for:
  - Mobile crisis team
  - Law enforcement (if involved)
  - Acute care hospital (where the client is being taken to the ED)
  - Psychiatric hospital where the patient will be transferred
  - Client's PCP (if not already on file and valid)
  - Client's psychiatric medication provider (if not already on file and valid)
  - Others in the client's support system (family, friends, peer specialist, etc.)
- Make copies for the client before the client leaves your office.
- Send copies to members of the care team, as is appropriate.



PATIENT ADVOCACY MUSTS

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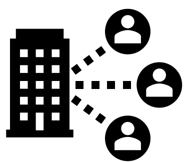
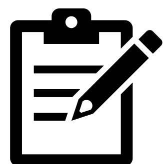
Communicate!

- Call to check in on the status of your client – mental health status, disposition changes
  - Offer to help with patient disposition.
- Ask to talk to your client – check in by phone (try calling both the client and the hospital)
  - Ask your client if his/her basic needs are being met (dietary, hygiene, etc.).
  - Ask your client if he/she feels as if the ED staff is compassionate, caring, empathic.
  - Ask if your client is being given their regular medications prescribed by their PCP.
  - If the client says “no” to any of the above, ask for specific examples and take notes.



Collaborate!

- Ask if the ED will arrange a visit or session with you either in person or via telehealth.
- Update your client’s PCP and other mental health providers, as appropriate.
- Update family members and others in the client’s support system, as appropriate.



Document!

- Document EVERYTHING, including times, dates, names, roles, and DETAILS.

TIMELY FOLLOW-UP

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Follow up upon admission to the psychiatric hospital

- Check in with the psychiatric hospital's staff to identify yourself and offer any pertinent information concerning your client's diagnostic and psychosocial history.
- Ask about your client's current mental status.

Follow up at discharge

- Check in with your client by phone as soon as possible after discharge.
- Schedule a session with your client as soon as possible after discharge.
  - Continue to assess for SI, HI, etc.
  - Debrief and help your client process their experiences in the ED and/or psychiatric hospital.

ADVOCATE

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When to advocate and/or intervene at a higher level?

- If you feel as if your client's needs are not being met and/or your client is not being treated with dignity and respect, you might consider advocating at a higher level.
- This may involve:
  - Speaking with the hospital's compliance officer
  - Contacting state regulatory agencies, such as the Tennessee Department of Health, Division of Health Care Facilities
  - Contacting advocacy organizations such as NAMI, TN Mental Health Consumer's Association, Mental Health America, Disability Rights Tennessee
  - Contacting the media
  - Advocating on a systems level (e.g., talking to legislators)

When you see something that is not right, not fair, not just, you have to speak up. You have to say something; you have to do something." -John Lewis

CONSENT TO ADVOCACY

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Key Considerations

- Best interest of the client
- Evaluate risks and benefits
- Signed release forms
- Consent to Advocacy form example (not required, but can be helpful)
- Remember the ACA Code of Ethics

Family Counseling Center of Middle Tennessee, Inc.
104 E. High Street
Manchester, TN 37355
931.723.0380

Consent to Advocacy

Advocacy is part of the professional identity of licensed professional counselors. As stated in the American Counseling Association Code of Ethics, "when appropriate," counselors "advocate at individual, group, institutional, and societal levels to address potential barriers and obstacles that inhibit access and/or the growth and development of clients."

As your counselor, I am willing and honored to "advocate for you" and "empower you to advocate for yourself" as it is determined to be appropriate and beneficial to your mental health and the mental health care you receive. However, you should be aware that advocating for you may involve disclosure of some of your protected health information. Of course, this would only occur if you have specifically consented by signing a Release of Information form. Also, as you advocate for yourself, there may be risks as well as benefits of doing so. Anticipated risks, for example, may involve some distress when telling "your story." Anticipated benefits may involve initiating positive change at individual, group, institutional, and/or societal levels and helping you feel empowered as you tell your story.

By signing below, you acknowledge that your counselor has discussed with you the risks and benefits of both advocating for you and empowering you to advocate for yourself, and you agree to allow your counselor to both advocate for you and help you advocate for yourself.

______________________________ Printed name of client	______________ Date of birth
______________________________ Signature of client/parent or guardian of client	______________ Date
______________________________ Signature of counselor	______________ Date

ABOUT ELLIOT

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Presenter info

- **Elliot Pinsly, LCSW** – Chief Executive Officer for the Behavioral Health Foundation, a 501(c)(3) nonprofit policy research and strategic advocacy center in Nashville, TN
- A mental health and addiction policy researcher, award-winning advocacy leader, native Nashvillian, and graduate of Tulane University (BA, MSW)
- Co-Founder and Co-Chair of the TN Diversion Coalition
- CIT in Tennessee Task Force Member
- National Leadership Council - Police, Treatment, & Community Collaborative (PTACC)
- Global Law Enforcement & Public Health Association (GLEPHA) Mental Health Special Interest Group (SIG) Convenor
- Past clinical experience providing outpatient and in-home therapy (VA; Centerstone)

No conflicts of interest to report

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About the Behavioral Health Foundation

- A neutral 501(c)(3) nonprofit policy research center, founded in July of 2020
- National organization based in Nashville, TN, with a state-level policy focus
- Research, policy analysis, legislative proposals, education, collaboration, big ideas
- Focus is on mental health, addiction/overdose, and criminal justice intersections
- Leveraging data to drive systems change, protecting human rights
- Working directly with policy makers, industry experts, people with lived experience
- Media engagement – local and national investigations
- Interfacing with regulators, legal system, law enforcement
- Strategic advocacy leadership and technical support

A data-driven policy center to advance mental health

behavioralhealthfoundation.org

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If you appreciate our work, please consider supporting with a charitable donation.

TN DIVERSION COALITION

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Leading Deflection & Pre-Arrest Diversion Efforts in TN

- A statewide collective advocacy coalition which launched in 2016
- Helped secure $16.5M for pre-arrest diversion programming & $4M recurring for emergency mental health transportation reform
- Meets quarterly, plus committees: *Collaborative Crisis Response; Addiction & Overdose; EDs & EMS; Emergency Mental Health Transportation; Children & Youth*

EMTALA LAW

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Emergency Medical Treatment and Labor Act (EMTALA)

- Enacted by Congress (1986) to ensure non-discriminatory emergency treatment in Medicare-participating hospitals, regardless of insurance status, ability to pay, race, etc.
- For anyone with an "emergency medical condition" – regardless of insurance or ability to pay – strictly requires that hospitals with a "dedicated emergency department" (DED) provide stabilizing treatment or complete an appropriate transfer to specialized provider (if unable to provide the necessary care directly)
  - An individual expressing SI or HI and determined to be a danger to self or others OR otherwise under a certificate of need for involuntary admission/detention is considered to have an "emergency medical condition" (therefore EMTALA applies).
  - Psychiatric hospitals are considered to have a DED if they "provide emergency care if you walk in without an appointment, has signs posted saying it provides emergency care, and received Medicare funding." Most private psychiatric hospitals meet this definition.
  - Forbids psychiatric hospitals with a DED or those receiving an ED transfer from considering insurance or ability to pay when assessing whether they have capacity.
- **LONG STORY SHORT: Psychiatric hospitals cannot turn patients in mental health crisis away based on their insurance status or ability to pay, in emergency situations.**

https://calhospital.org/wp-content/uploads/2021/04/emtala_1_up.pdf + https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO-19-15-EMTALA.pdf

FILE EMTALA COMPLAINT

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EMTALA provides eligible patients these protections (per CMS):

- "An appropriate medical screening exam to check for an emergency medical condition, and if you have one,
- Treatment until your emergency medical condition is stabilized, or
- An appropriate transfer to another hospital if you need it"

File an EMTALA complaint

- If a hospital refuses to take a patient in a mental health emergency situation based on their insurance status or ability to pay, this is likely to be considered a violation of EMTALA.
- File a complaint online (can be completely anonymous):
  https://www.cms.gov/priorities/your-patient-rights/emergency-room-rights/complaint-form
- Whistleblower protections are in place protecting employees who report from retaliation.
- CMS investigates all EMTALA complaints and takes them very seriously.

https://www.cms.gov/priorities/your-patient-rights/emergency-room-rights + https://www.cms.gov/priorities/your-patient-rights/emergency-room-rights/how-to-file-complaint

LEGAL/REGULATORY ISSUES

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Americans with Disabilities Act (ADA)

- People with serious mental health disorders are considered to have a disability and are protected from discrimination under the ADA.
- Complaints and suspected ADA violations related to health care situations should be filed with the U.S. Department of Justice (DOJ), Civil Rights Division. The online complaint form can be found here:

  https://civilrights.justice.gov/report/?utm_campaign=499a0d26-884a-47aa-9afc-70094d92e6f5
- In addition to making a complaint directly to the DOJ, consider reporting the issue to Disability Rights TN, the federally designated protection and advocacy authority for people with disabilities in TN. Call 800-342-1660 or submit a request for assistance here: https://www.disabilityrightstn.org/get-help/

State Regulatory Boards

- File a complaint with a specific clinical board of health, via the TN Dept. of Health, if a complaint involves a specific licensed clinician.
- File a complaint with a hospital's or mental health provider's licensure entity (e.g., TDMHSAS, TN Health Facilities Commission).

https://www.ada.gov/file-a-complaint/#filing-a-complaint-with-the-department-of-justice-civil-rights-division

LEGISLATIVE EFFORTS

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Psychiatric Bed Tracking Registry

- TN already has an underutilized statewide psychiatric bed tracking system in place – with data currently accessible only to hospitals and mobile crisis staff.

HB827 (Sparks) / SB866 (Reeves)

- TN Diversion Coalition led legislation sought to increase utilization & awareness:
  - Provided clear definitions and parameters for the existing statewide psychiatric bed tracking registry in the TN Department of Health's Healthcare Resource Tracking System (HRTS).
  - The registry would display the number of staffed, currently available psychiatric beds at participating hospitals across the state, broken down by type: adolescent (<18), adult (18-59), and geriatric (60+).
  - Voluntary bed tracking data would be publicly accessible for use by ED staff, crisis providers, therapists, and family members to identify nearby psychiatric hospitals that may be able to receive a new patient.

Result?

- Passed unanimously in TN House; was not brought to the floor in the TN Senate
- FOR-PROFIT SPECIAL INTERESTS EFFECTIVELY BLOCKED THIS LEGISLATION!

https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0827

EMPOWERING CLIENTS

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HOUSE RESOLUTION 7009

By Sparks

A RESOLUTION to honor lifelong Tennessee resident Helen Moore for her courageous mental health advocacy.

WHEREAS, we take great pride in recognizing those outstanding individuals who serve as advocates for the greater good, thereby contributing significantly to the well-being of their fellow citizens; and

WHEREAS, advocacy can be a powerful tool for Tennesseans to help improve the lives of others with mental health issues; and

WHEREAS, one such person is Helen Moore, who, through her courageous advocacy on behalf of mental health, has distinguished herself as a leader in the community of whom we can all be proud; and

WHEREAS, a lifelong Tennessean and current resident of Manchester with thirty years of experience as a certified nursing assistant, Mrs. Moore has played a vital role serving patients in the Tennessee healthcare system throughout her career; and

WHEREAS, Helen Moore has bravely shared her personal story of lived mental health experience with the public and members of the General Assembly; and

WHEREAS, Mrs. Moore's dedication to service is clearly deserving of our respect, admiration, and commendation; now, therefore,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED THIRTEENTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, that we honor and commend Helen Moore for her exemplary service to the State of Tennessee as a fearless advocate on behalf of mental health, extending our deepest gratitude for her courage in sharing her story and ideas for improving access to mental healthcare services.

TENNESSEE
GENERAL ASSEMBLY

LEGISLATORS LEGISLATION VIDEOS SCHEDULES & CALENDARS COMMITTEES DIRECTORY

HR 7009
by *Sparks

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Memorials, Recognition - Helen Moore -

Bill History | Amendments | Video | Summ

HR7009 ACTIONS	DATE
Signed by H. Speaker	08/22/2023
Enrolled; ready for sig. of H. Speaker.	08/22/2023
Sponsor(s) Added.	08/22/2023
Adopted, Ayes 96, Nays 0, PNV 1	08/22/2023
Intro., placed on H. consent cal. for 8/22/2023	08/21/2023
Filed for introduction	08/18/2023

Advocacy can be empowering!

- Helen Moore, the woman featured in the News Channel 5 story shared earlier in this presentation, was honored by the TN House of Representatives with a resolution that passed unanimously – acknowledging her “courageous” and “fearless” advocacy in shedding light on ED boarding problems in the state.

https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HR7009

OTHER POLICY ISSUES

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Knoxville EmPATH Unit

- Opened in June; operated by McNabb Center
- 24/7 with 16 beds

Psychiatric Hospital Industry Profits

- In July 2023, the CFO of UHS said the following on an investor earnings call:
  - *"We've been going to our lowest payers and either demanding increases from them or canceling those contracts that we view to be inadequate and* ***simply admitting patients whose insurance will pay us more****, again, in an environment where we can only treat a limited number of patients. We can be more selective about who we treat and the fairness of what we think we're being paid."* – Steve Filton, UHS Chief Financial Officer

Tennessee ED Boarding Workgroup

- Convened in 2017: TN Dept. of Mental Health & Substance Abuse Services (TDMHSAS), TN Hospital Association (THA), and TN College of Emergency Physicians (TCEP)
- Most recent report published 2019: https://tha.com/wp-content/uploads/2019/10/2019-ED-Boarding-Report-Final-With-Appendices.pdf

https://mcnabbcenter.org/empath-careers/

ADVOCACY OPPORTUNITIES

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Many Ways to Get Involved

- Listen, learn, read, watch, and share
- Build collaborative relationships
- Join a coalition, council, or task force
- Attend webinars, conferences, etc.
- Talk to your elected officials
- Discuss with friends, family, coworkers
- Report legal, regulatory, & ethical violations

CONTACT US

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TN DIVERSION COALITION
Co-Founder and Co-Chair

Suzanne Blackwood, MS, LPC-MHSP

TN DIVERSION COALITION
Chair, Emergency Departments & EMS Committee
snblackwood118@gmail.com

We would love to hear from you!

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QUESTIONS?

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There is no such thing as a stupid question…ask away!