COVID-19 and Psychiatry: Legal and Clinical Implications

AHRMNY
The Association for Healthcare Risk Management of New York, Inc.



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OVERVIEW

- The COVID-19 pandemic has seriously impacted the legal and clinical services available to those individuals suffering from mental illness and their loved ones who often seek assistance on their behalf.
- The rapid spread of this highly contagious disease resulted in a host of mental health consequences: feelings of uncertainty, sleep disturbances, anxiety, distress, and depression.
- Restrictive measures such as quarantining, isolation and social distancing have further exacerbated psychological distress.
- Frontline workers, elderly, homeless, and those with pre-existing mental disorders, substance abuse and family history of suicide are at higher risk.

OBJECTIVES

- Explore the challenges faced on an inpatient psychiatric unit during COVID-19 including new safety protocols and having to treat and/or transfer a psychiatric patient who tests positive.
- Discuss the impact of COVID-19 on Mental Hygiene Law Article 9 proceedings for retention and treatment over objection.
- Examine the changes in outpatient psychiatric treatment during COVID-19 such as the increased use of telepsychiatry services, reduced access to medication/treatment, and the constraints on Assisted Outpatient Treatment programs.

I. IMPACT ON INPATIENT PSYCHIATRIC UNITS

- New protocols/procedures:
  - Staff, physicians and patients wearing facial masks on the unit (and additional PPE, if necessary).
  - Social distancing.
  - Reduced or eliminated meals, group activities, and group therapy.
  - Changes to visitation policies.

COVID + PATIENTS ON THE INPATIENT PSYCHIATRIC UNIT

- Some hospitals have converted entire psychiatry units to COVID + units only.
- Patients must remain isolated after testing positive.
- Limited to no interaction with peers.
- Staff/Physicians in full PPE.
- Transfer to a medical unit, if necessary.

TRANSFERRING A COVID + PATIENT

- Some hospitals/units do not have the staff or space to accommodate COVID + psychiatry patients and must transfer them to other psychiatric facilities.

- Consequences:
  - Disrupts treatment and the therapeutic alliance between the patient and the treatment team.
  - Court Orders for medication terminate upon discharge to another facility. They do not transfer. The accepting hospital will then have to evaluate the patient and apply to the court again for continued treatment.

PATIENT COMPLIANCE WITH COVID-19 PROTOCOLS

- Patients may refuse to wear masks or follow social distancing requirements.
- Patients may not engage in adequate personal hygiene to prevent the spread of COVID-19.
- Patients may refuse to take a COVID-19 test upon admission.
  - When applying to the Court for treatment over objection, some hospitals will request "routine blood drawing, vital signs and COVID-19 test".
- Patients may refuse to participate in Mental Hygiene Court Proceedings due to paranoid and/or delusional beliefs surrounding the use of virtual platforms.

IMPORTANCE OF DOCUMENTATION

- A clear written record for each patient can improve a treatment team's overall functioning and reduce potential liability exposure.
- Examples:
  - Document in the patient's record his/her compliance (or non-compliance) with COVID-19 protocols (i.e., mask wearing, hygiene).
  - Document procedure followed when a patient tests positive for COVID-19 (i.e., transfer to another unit or hospital).
- Records that are kept consistently and according to a thoughtful system can minimize exposure. Documentation can help the hospital show that it acted reasonably.

MENTAL HYGIENE LAW COURT PROCEEDINGS

- Since March 2020, MHL Article 9 court proceedings have been held virtually via Microsoft Teams.
- Doctors and patients are no longer transported to court or other hospitals for retention, treatment over objection or AOT hearings.
  - Reduced Liability:
    - Doctors and staff do not leave the unit to attend court in person.
    - Reduced risk of transporting patients to court.
    - No elopement risk during transport to court.
    - Security readily available, if needed.

BURNOUT/STAFFING ISSUES

- In Spring/Summer 2020, it was common for staff to feel fearful of working in a hospital and getting COVID-19.
  - Generally, fears have abated, especially with distribution of the vaccine.
- Staffing issues when someone is unable to come to work because of COVID-19 illness, quarantine requirements after exposure to COVID-19, and/or caring for a family member with COVID-19.
- Confusion regarding CDC guidance on mask-wearing and social distancing as the vaccine is more widely distributed.

II. IMPACT ON OUTPATIENT SERVICES

- Use of virtual individual and/or group therapy.
  - Changes the doctor/therapist-patient relationship.
- New patient intake on virtual platforms.
- Reduced or eliminated in-person visits by ACT teams or other case managers/social workers may contribute to non-compliance.
  - Relying on telephone calls and video conferences to check-in.
- Difficulty obtaining monthly injectable medication when clinics close or restrict visits.
- Increase in hospitalizations for non-compliance with outpatient therapy and/or medication.

IMPACT ON AOT SERVICES

- Some NY counties stopped accepting and/or processing community referrals for AOT when the pandemic hit in March 2020.
- Issues obtaining medical records to demonstrate the client meets criteria.
- Issues obtaining a psychiatric evaluation to determine eligibility for AOT services (no in-person evaluations).
- In some counties, the only way to get accepted into the AOT program is through an inpatient admission wherein the treatment team applies for AOT as part of the discharge plan from the hospital.
- Renewal applications are still being processed, as far as we know.

III. LIABILITY ISSUES TO CONSIDER

- Treating new patients virtually, never having met the patient in person.
- Continuing treatment of existing patients without seeing them in person for months to a year.
- Prescribing medication after virtual evaluations/examinations.
- Informed consent to using virtual platforms.
- Inpatient/Outpatient staff declining to get the COVID-19 vaccine.

LIABILITY ISSUES AND CONFIDENTIALITY

- Confidentiality rests with the patient or a legally authorized person via Health Care Proxy / Guardianship.
- Confidentiality Laws
  - State- MHL § 33.13 and § 33.16
  - Federal- HIPA
- Releases/waivers.
  - Example: During a virtual therapy session, other family members or children may be present in the house.

LIABILITY ISSUES AND HIPAA

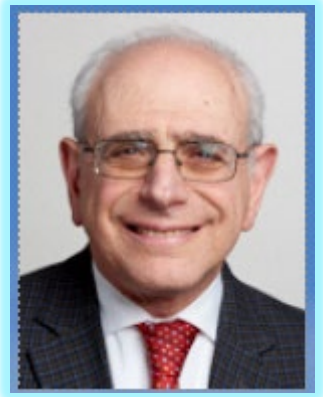
- In March 2020, the OCR announced that it will waive potential penalties for good faith use of telehealth methods during the national public health emergency.
- Health care providers may, in good faith, provide telehealth services to patients using remote communication technologies, even if the application, such as FaceTime or Skype, does not fully comply with HIPAA rules.

Source: *OCR Issues Guidance on Telehealth Remote Communications Following Its Notification of Enforcement Discretion*, (Mar. 20, 2020), https://www.hhs.gov/about/news/2020/03/20/ocr-issues-guidance-on-telehealth-remote-communications-following-its-notification-of-enforcement-discretion.html.

THANK YOU!



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