

Behavioral Health Bill Moves Forward, But Provision Allowing Authorities to Intercept Communications of Patients, Among Other Problems, Remain Stumbling Block

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A bill that seeks to improve services to children and adults who suffer from behavioral health challenges, mental health disorders, developmental disabilities, and alcoholism, and drug addiction has been approved by senators on the Committee on Health, Hospitals and Human Services.

Last Friday, legislators voted to further amend the Virgin Islands Behavioral Health Act and to refer it to the Committee on Rules and Judiciary for further vetting. The amendments included changing the terms “behavioral health or psychiatric social workers” and replacing it with

“licensed certified independent social worker” regarding who can care for these patients and clarifying the meaning of “substance use disorder”.

These and other changes come after numerous reviews by legislators who have rejected several previous drafts of the 70-page bill. The bill requires among other things, the need for intergovernmental and private collaboration to manage behavioral and mental health in the territories. However, none of the changes directly addressed the major challenges aired by the testifiers.

While the bill moves forward, there are several loop holes that still need to be remedied. Concerns range from possible government infringement on the operations of private behavioral health facilities, violation of patients’ rights by secluding and restraining a patient if their medical needs require it, to sharing information on a client’s health without their consent.

For example, Dr. Lori Thompson, clinical psychologist and government relations committee chair of Virgin Islands Psychologist, while supporting the bill, said she was worried about certain stipulations which she believes would “bankrupt the territory” and result in unintentional legal challenges for the government.

“In spite of the bill’s good intention, the bill as drafted raises many problems that will invariably lead to many unintended, undesirable consequences,” she said, naming three primary areas of concern to include the long-term funding of the programs and services proposed in the bill, potential lawsuits against the government based on certain legal language outlined, and violation of patients’ rights.

Dr. Thompson described the bill, as it is written, as yet “another top-heavy-layer of bureaucracy over an already stretched and under-funded system.”

“The bill as written gives the illusion of funding through the Casino Revenue Fund but this money is finite. Nonetheless the bill poses infinite obligations, costs and liabilities on the government which will far exceed any revenues generated by the casinos,” she reasoned.

The bill intends to tax casinos to fund the behavioral health system. Funding would also have to cover training agencies outside the Department of Health which the government would assume responsibility for. A gesture, the doctor suggests, can present liability situations that could bankrupt the territory.

In a written testimony, the V.I. Bar Association also encouraged the legislators to “reconsider the funding source” for this bill.

Meanwhile, Samuel Joseph, attorney in the Public Defender’s Office, said the method to determine what makes an individual an indigent person, as stated in the bill, should align with the judiciary’s meaning to prevent potential patients from being turned away.

“Pursuant to the proposed legislation, indigency is based on an eligibility system developed by the Department of Health, notwithstanding the judiciary has its own method of determining indigency. These potentially varied positions could result in a stymied application or outright denial of mental health services for those in need,” he explained.

He also petitioned for a clear meaning of the term “probable cause” and asked legislators to reconsider the definition of a person who is considered an “eligible individual” and who is responsible for incurring the cost of evaluation for a person suspected of having a mental illness or

disability, as well as to review a section of the bill which gives health authorities the ability to intercept the mail or communication of patients if they believe it contains contraband or information of unlawful activity.

“This portion of the bill would give most behavioral health facility employees authority to intercept and read every piece of mail which would include legal correspondence on cause to believe,” he explained, calling the language “vague” and “broad”, noting that it would not pass constitutional scrutiny.

Admittedly, Senator Novelle Francis who sponsored bill No. 34-0279 said the bill is not perfect but remarked that it is better to start with good than to wait for perfect, particularly while trying to deal with such a pressing social issue.

“This is not a perfect bill. We have gone through multiple drafts to get us to where we are at today,” he said.

“It is not a perfect bill but we cannot allow perfect to stand in the way of good. This is a good bill and I commit to continue to work with my colleagues and stakeholders to refine this bill,” he insisted, adding that, “This population cannot wait any longer. We see it every single day – the fallouts on our roadways, and our streets, and our neighborhoods. They’re our family members, they’re our veterans, they’re our colleagues, they’re our nurses, teachers, medical professionals.”

The bill would also treat developmental disabilities differently; will include the establishment of a treatment facility for the mentally ill; and will provide help for people with behavioral health challenges as well as their caretakers.

All but one of the senators present — Senator Alma Francis-Heyliger — voted on Friday to move the bill forward, stating, “Unfortunately, with the four-page amendment, from discussions today, it will not be able to fully clean up some of the issues that still would exist with this bill.”