

VIRGINIA COLLEGE MENTAL HEALTH STUDY

LEGISLATIVE RECOMMENDATIONS

Joint Commission on Health Care: Healthy Living/Health Services Subcommittee

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Susan M. Davis
Associate Vice President for Student Affairs
University of Virginia

General Assembly, 2008

- ▣ More than 25 bills signed into law in response to the Virginia Tech tragedy (Source: Governor Kaine press release, 4/9/08)

- ▣ Included the Omnibus Mental Health bills, which revised commitment criteria and proceedings.

Legal Issues Task Force

- ▣ State laws ripe for review: Virginia's colleges and universities have operated under the 2008 legislation for three academic years.
- ▣ Charge: Task Force sought to evaluate impact of recent Virginia legislation with three goals in mind:
 - (a) Identify any remaining gaps in state law
 - (b) Identify any implementation challenges
 - (c) Promote best practices among Virginia schools
- ▣ Aim: Identify non-legislative solutions wherever possible.

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Relevant Federal Law

- ▣ Federal Laws governing aspects of student mental health crises:
 - Health Records Privacy: HIPAA
 - Disability Discrimination: ADA & Rehabilitation Act
 - Education Records Privacy: FERPA

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The Three Little Pigs: FERPA , HIPAA & State Law



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FERPA: The House of Straw

- ▣ No Private Cause of Action
- ▣ No Loss of Federal Funding for Single Violation
- ▣ Need Practice or Policy of Violations to Lose Funding
- ▣ Tax Dependency Exception
- ▣ Broad Health & Safety Exception: If an educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individual, it may disclose the information to any person, including parents, whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

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FERPA: The Wolf Blowing Down the House of Straw



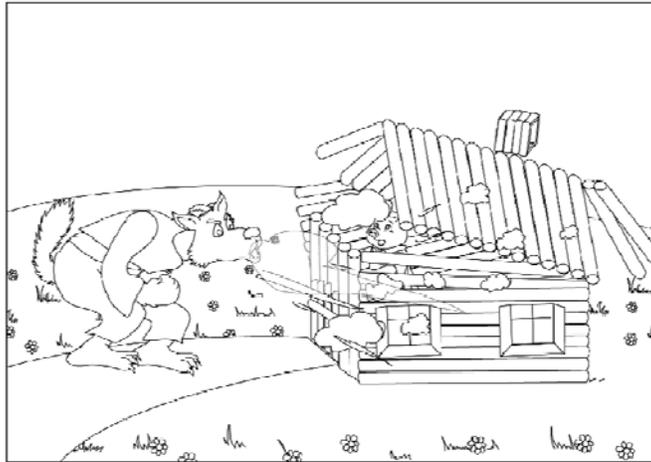
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HIPAA: The House of Sticks

- ❑ Not applicable to the vast majority of campus counseling centers.
- ❑ Applicable to hospitals and outside providers.
- ❑ When applicable, permits unauthorized release of protected health care information where necessary to prevent or lessen a serious or imminent threat to a person or to the public, when such disclosure is made to someone the health care worker believes can prevent or lessen the threat.

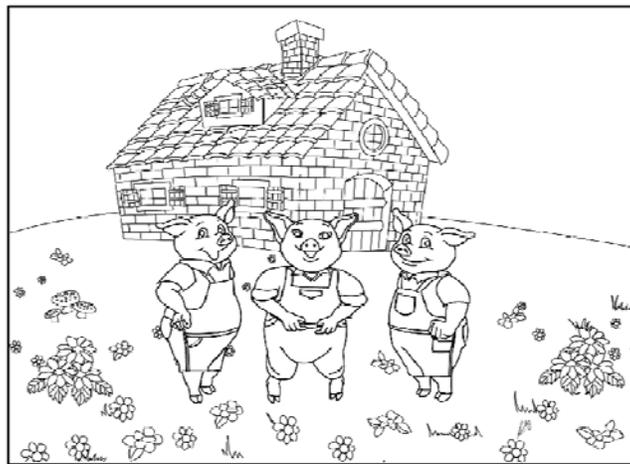
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HIPAA: The Wolf Blowing Down the House of Sticks



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Virginia Law: The House of Bricks



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Virginia Health Records Privacy Act

- ❑ No clear health & safety emergency exception applicable to kinds of cases we work in higher education.
- ❑ Health care entities may, and, when required by other provisions of state law, shall, disclose health records as required or authorized by law relating to public health activities, health oversight activities, serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283, 32.1-283.1, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.2-1509, and 63.2-1606.
- ❑ State law also requires a health care provider to warn of an immediate threat by a patient to harm an identifiable individual, but the warning may be made only to the police or the intended victim. Va. Code 54.1-2400.1.

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Numerous Other Virginia Statutes Adopted Pre-and-Post Va. Tech Tragedy

STAGES OF STUDENT TENURE

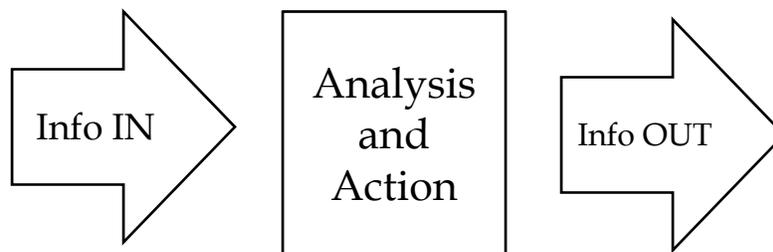
1. Post-admission/pre-enrollment: **THEY'RE YOURS & THEY'RE COMING!**
2. Enrollment: **THEY'RE HERE!**
3. Post-enrollment: **THEY'RE GONE...MAYBE!**

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Post-Admission/Pre-Enrollment

- ▣ Va. Code § 23-2.1:3. Students' high school records. *Each public and private institution of higher education **may require** that any student accepted to and who has committed to attend, or is attending, such institution provide, to the extent available, from the originating school a complete student record, including any mental health records held by the school. These records shall be kept confidential as required by state and federal law, including the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.*
(General Assembly, 2008; SB 636 (Cucinelli))

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Information IN

1. Is the information available? (e.g., do “originating high schools” keep such records?)
2. Is the source credible/reliable?
3. Is the information objective or subjective?
4. Do we need all the information available or are there certain pieces that are more valuable than others?

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ANALYSIS & ACTION

1. Are we adequately staffed to analyze the information?
 - a. If mass information, do we have sufficient staff to analyze it?
 - b. If technical information, do we have the expertise?
2. What can/should we do with the information?
Can we take any action?
 - a. By collecting the records, is there a legal duty to review all of them and/or monitor certain incoming students?
 - b. Are there legal impediments to taking action?

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INFORMATION OUT

1. Can we share our analysis and/or actions with other interested parties?
 - a. Are there legal impediments, e.g., Virginia Health Records Privacy Act?
 - b. Are there ethical impediments, e.g., licensure standards?
2. Is there any added value in those parties having this information? Can they take any appropriate action?

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Legislative Recommendations

- ▣ Survey Findings: No Virginia school is currently requesting mental health records for all incoming students. In 2008-2009, one public, one private, and one community college requested records on specific students.
- ▣ Permissive not mandatory text
- ▣ Title has caused confusion
- ▣ Recommendation: Amend title to clarify “originating school” includes high school or transferring institution of higher education.

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Enrollment

Suicide: Va. Code § 23-9.2:8. Policies addressing suicidal students. The governing boards of each public institution of higher education shall develop and implement policies that advise students, faculty, and staff, including residence hall staff, of the proper procedures for identifying and addressing the needs of students exhibiting suicidal tendencies or behavior. *The policies shall ensure that no student is penalized or expelled solely for attempting to commit suicide, or seeking mental health treatment for suicidal thoughts or behaviors. Nothing in this section shall preclude any public institution of higher education from establishing policies and procedures for appropriately dealing with students who are a danger to themselves, or to others, and whose behavior is disruptive to the academic community.*

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Legislative Recommendations

- ▣ Sentence One: All four-year public institutions have developed and implemented the mandated suicide prevention policies. Only 38% of community colleges have done so. Recommend revising text to release community colleges from this mandate until circumstances change.
- ▣ Sentence Two: Clarify or repeal final two sentences. Let ADA and Rehabilitation Act guide schools in this complicated area.

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Enrollment

Commitment

Criteria: In 2008, House Bill 559 changed the state criteria for ECOs, TDOs, and involuntary commitment so that a person may be taken into custody, temporarily detained, or involuntarily committed if the person is mentally ill and there exists a “substantial likelihood that, as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any.”

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Enrollment

Commitment

2. Va. Code § 37.2-818: Commitment hearing for involuntary admission; recordings and records.

B. Except as provided in this section and § 37.2-819, the court shall keep its copies of recordings made pursuant to this section, relevant medical records, reports, and court documents pertaining to the hearings provided for in this chapter confidential. The person who is the subject of the hearing may, in writing, waive the confidentiality provided herein. In the absence of such waiver, access to the dispositional order only may be provided upon court order. Any person seeking access to the dispositional order may file a written motion setting forth why such access is needed. The court may issue an order to disclose the dispositional order if it finds that such disclosure is in the best interest of the person who is the subject of the hearing or of the public. The Executive Secretary of the Supreme Court and anyone acting on his behalf shall be provided access to the court's records upon request. Such recordings, records, reports, and documents shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

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Needs Priority Attention

- ▣ Most significant information gap in college mental health crises.
- ▣ Current reality: College or university must have knowledge of the commitment proceedings to obtain order.
- ▣ Survey findings: Most schools not notified of commitment proceedings involving their own students. Schools are key stakeholders. They may have mental health or behavioral information that would aid officials involved in proceedings. Also home to discharged student.

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Non-Legislative Recommendations

- ▣ CSBs already burdened; Limited time and resources in these proceedings.
- ▣ Colleges and universities looking to become helpful partners in front and back end.
- ▣ Pursue these steps before legislative reform:
 - (1) Written MOUs b/w school & CSB
 - (2) Written MOUs b/w school & hospital
 - (3) 24/7 school contact list
 - (4) Collaborative trainings

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Enrollment

Disclosure/Sharing of Information to Parents

Va. Code § 23-9.2:3.C: Institutions of higher education; notification of mental health treatment. *Notwithstanding any other provision of state law, the board of visitors or other governing body of every public institution of higher education in Virginia shall establish policies and procedures requiring the notification of the parent of a dependent student when such student receives mental health treatment at the institution's student health or counseling center and such treatment becomes part of the student's educational record in accordance with the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part 99). Such notification shall only be required if it is determined that there exists a substantial likelihood that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs. However, notification may be withheld if the student's treating physician or treating clinical psychologist has made a part of the student's record a written statement that, in the exercise of his professional judgment, the notification would be reasonably likely to cause substantial harm to the student or another person. No public institution of higher education or employee of a public institution of higher education making a disclosure pursuant to this subsection shall be civilly liable for any harm resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct by the institution or its employees.*

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Legislative Recommendations

- ❑ Area of Improvement: Schools understand that FERPA not an obstacle; state law requires parental notification.
- ❑ Implementation Challenges: Exception Clause; Not all schools have a “treating physician” or “treating clinical psychologist.”
- ❑ Recommend changing text to “health care professional.”

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Enrollment

Threat Assessment

- Va. Code § 23-9.2:10. Violence prevention committee; threat assessment team.
- D. The board of visitors or other governing body of each public institution of higher education shall establish a specific threat assessment team that shall include members from law enforcement, mental health professionals, representatives of student affairs and human resources, and, if available, college or university counsel. Such team shall implement the assessment, intervention and action policies set forth by the committee pursuant to subsection C.

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Legislative Recommendations

- ▣ Positive Improvement; TATs active on all four-year public campuses.
- ▣ General Assembly, 2010: Revisions to allow better health care & criminal record information to flow to TATs.
- ▣ Implementation uneven on community college campuses.
- ▣ Community colleges and smaller four-year publics do not have staffing of all categories.
- ▣ Loosen text to reflect that staffing is not same across all campuses.

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Conclusion

- ▣ Virginia as a model for the nation.