Ban on boarding mentally ill in ERs could force the release of many

More than 100 patients could be released from hospital emergency rooms later this month as the state scrambles to find long-term beds and funding to abide by a state Supreme Court ruling.

By Andy Mannix

Seattle Times staff reporter

More than 100 severely mentally ill patients in need of care could be released from Washington hospitals before the end of the month, as the state struggles to comply with a recent ban on warehousing psychiatric patients in emergency rooms.

The state has been scrambling for a week to respond to the state Supreme Court’s ruling, but so far has been able to free up only a fraction of the long-term beds that will be needed when the decision goes into effect Aug. 27, said Andi Smith, Gov. Jay Inslee’s policy adviser on health and human services.

“We simply don’t have the bed capacity to serve all of the people who need treatment,” Smith said Thursday. “It really is as simple as the demand is greater than the supply.”

This poses a serious dilemma for hospitals. By adhering to the order and knowingly discharging dangerous or unstable patients, they fear they could be in violation of the federal Emergency Medical Treatment and Labor Act (EMTALA), said Taya Briley, general counsel for the Washington State Hospital Association.

“The whole intent of EMTALA is that when a patient needs treatment, the patient doesn’t end up on the street,” she said. “EMTALA requires treatment until the patient is stabilized.”

The association has urged hospital lawyers and administrators to evaluate each case independently and make decisions on what to do with the patient, she said. “It’s going to be, in each instance, a balancing act.”

The state expects it will need to come up with tens of millions of dollars so its already underfunded mental-health system can comply with the court’s order.

So-called psychiatric boarding has become an increasingly common last resort for hospitals over the past five years as mental-health resources have dwindled.

If a mental-health professional determines a patient needs involuntary treatment, but no inpatient bed is available, the patient often is held at the hospital emergency room until one opens up. In some cases, patients have been strapped to gurneys and forcibly medicated without proper psychiatric care.
While many in the mental-health field celebrated the court’s ban, they also were surprised at the swiftness of the court’s action and feared the state didn’t have the resources to comply with the decision right away.

“I think just the sheer speed of it caught folks off guard,” said Briley.

The state will appeal to the Legislature next session for more funding to address the crisis, said Smith. In the meantime, the Department of Social and Health Services is attempting to move around resources and find more beds to address the immediate need.

A special legislative session is unlikely, but it’s not off the table, said Smith. She emphasized the current predicament is part of a larger mental-health funding problem in Washington.

It’s impossible to predict exactly how many patients still needing care might be released later this month, given that more could be admitted or discharged in the next two weeks.

There also is some confusion over the court’s definition of boarding, and whether hospitals, such as Harborview Medical Center in Seattle, that offer continual psychiatric care in emergency rooms, would be allowed to continue holding patients under the law.

But as of July 31, hospitals around the state were boarding about 200 patients who would be affected by the court’s ban, said Smith. The state so far has been able to find only 50 new beds that will be available by the day the decision goes into effect.

“We will work as hard at implementation as we possibly can, but the problem will not be solved on day one,” she said.

In the meantime, mental-health officials are searching for short-term solutions.

On Wednesday, the state hospital association sent the governor’s office a list of policy proposals, which included appropriating money for more community beds and asking the state Supreme Court to suspend the decision for 90 to 120 days so more inpatient beds can be made available. In the long term, the association suggested expanding Medicaid supportive housing to patients who might otherwise be cycling through the system.

King County, where the demand for mental-health resources is the greatest in the state, also has been hustling to find more beds. Jim Vollendroff, director of the mental-health division, said the county is in the process of securing up to 114 beds that could be used for involuntary commitment at Cascade Behavioral Health in Tukwila and Fairfax Hospital in Kirkland. At least 30 of those could be available by the end of the month; the rest would open in mid-September and early October.

Vollendroff’s staff also has been working to find placement for the patients currently being boarded in King County, he said. As of last week, there were only eight he believed needed to be moved out of emergency rooms per the court’s decision, but that number is always changing.

“We have more coming in every day,” he said. “Every day it’s a new story.”

*Andy Mannix: amannix@seattletimes.com*