House Bill 3408

Sponsored by Representative GALIZIO

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Establishes Bill of Rights for patients of health care facility for treatment of mental or behavioral health issues.

A BILL FOR AN ACT

Relating to health care facilities.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 5 of this 2007 Act are added to and made a part of ORS chapter 426.

SECTION 2. As used in sections 2 to 5 of this 2007 Act:

(1) "Department" means the Department of Human Services.

(2) "Health care facility" means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility or such other facility as the department determines suitable, any of which may provide diagnosis and evaluation, medical care, detoxification, social services or rehabilitation for committed mentally ill persons.

(3) "Mentally ill person" has the definition provided in ORS 426.005.

(4) "Patient" means a mentally ill person who is under the care of a physician, psychiatrist or other health care professional or, when appropriate, the patient's representative.

(5) "Patient's representative" means the patient's legal counsel, guardian, relative or friend who has authority to make health care decisions for the patient if the patient is found to lack the ability to make or communicate health care decisions to providers of health care, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(6) "Restraint":

(a) Means:

(A) Any manual method, physical or mechanical device, material or equipment that immobilizes or reduces the ability of a patient to move the patient's arms, legs, body or head freely; or

(B) A drug or medication when it is used as a restriction to manage the patient's freedom of movement and is not a standard treatment or dosage for the patient's condition.

(b) Does not mean a physical escort, devices such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets or other methods that involve the physical holding of a patient for the purpose of conducting routine physical examinations or tests, or to protect the patient from falling out of bed or to permit the patient to participate in activities without the risk of physical harm.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

(7) "Seclusion" means the involuntary confinement of a patient alone in a room or area from which the patient is physically prevented from leaving.

SECTION 3. (1)(a) A health care facility shall whenever possible inform each patient of the patient's rights in advance of furnishing or discontinuing patient care.

(b) The health care facility shall establish a procedure for the prompt resolution of patient grievances and shall inform each patient of whom to contact to file a grievance.

(c) The grievance procedure shall include a mechanism for the timely referral of patient concerns regarding quality of care or premature discharge to the Mental Health and Addictions Division of the Department of Human Services.

(d) The health facility shall, at a minimum:

(A) Establish a clearly explained procedure for the submission of a patient's grievance to the facility or to the Mental Health and Addictions Division;

(B) Specify a time frame for reviewing and responding to grievances submitted by patients; and

(C) Provide written notice of the facility's decision to resolve a patient's grievance that includes but is not limited to the name of the facility's grievance officer, information regarding any investigation of the grievance and the date on which the facility reached its decision.

(2)(a) The patient shall have the right to participate in the development, planning and implementation of the patient's plan of care and treatment.

(b) The patient shall have the right to make informed decisions regarding the patient's care, which includes the right to:

(A) Be informed of the patient's health status; and

(B) Request or refuse treatment.

(c) The patient shall have the right to formulate advance directives, as provided in ORS chapter 127, and to have the health care facility comply with any advance directives.

(d) The patient shall have the right to have the following persons notified of the patient's admission to a health care facility:

(A) A member of the patient's family or the patient's representative; and

(B) The patient's primary physician.

(e) These rights may not be construed as a mechanism for the patient to demand the provision of treatment or services deemed medically unnecessary or inappropriate.

(3) The patient shall have a right to privacy and safety, which includes the rights to:

(a) Personal privacy;

(b) Receipt of care in a safe setting; and

(c) Freedom from all forms of abuse or harassment.

(4)(a) The patient shall have the right to confidentiality of the patient's clinical records. Third parties unrelated to the care or treatment of the patient may not access the patient's records except when authorized by the patient, or by the patient's representative.

(b) The patient shall have the right to access information contained in the patient's clinical records within a reasonable time. A health care facility may not frustrate the legitimate efforts of patients to gain access to their own records and shall satisfy such requests within 30 days. A single extension of 30 days may be allowed if the health care facility provides notice to the patient, or the patient's representative, when claiming the extension during the initial 30-day period.

(5) The patient shall have the right to be treated with respect and compassion by physicians, licensed medical professionals and other staff employed at a health care facility.

(6) The patient shall have the right to receive care from licensed medical professionals and other health care facility staff who have received training in treating and relating to patients under care for treatment of mental illness.

(7)(a) The patient shall have the right to be free from corporal punishment and physical or mental abuse.

(b)(A) The patient shall have the right to be free from restraint or seclusion in any form that is imposed as a means of coercion, discipline, convenience or retaliation by the staff of a health care facility;

(B) Restraint or seclusion may be imposed only when necessary to ensure the immediate physical safety of the patient, a staff member or others, and must be discontinued at the earliest possible time; and

(C) Seclusion may be used only for the management of violent or self-destructive behavior. A patient may not be subject to seclusion for a period of more than four hours if the purpose of the seclusion is the convenience of the health care facility staff.

(c) Restraint or seclusion may be used only when less restrictive means of intervention have been determined to be ineffective to protect the patient, a staff member or others from harm. The type of restraint or seclusion used may only be the least restrictive intervention that will be effective to protect the patient, a staff member or others from harm.

(d) The use of restraint or seclusion must be in accordance with the order of a physician or other licensed medical practitioner who is responsible for the care of the patient and is authorized to order restraint or seclusion pursuant to health care facility policy, in accordance with applicable state law. Orders for the use of restraint or seclusion may not be included as part of a standing order or used on an as-needed basis.

(e) If the attending physician did not order the restraint or seclusion, then the attending physician must be notified of the order within a reasonable time of the order having been given.

(f) Unless superseded by federal law that is more restrictive:

(A) Each order for restraint or seclusion used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member or others may be renewed only in accordance with the following limits, for up to a total of 24 hours:

(i) Four hours for adults who are 18 years of age or older;

(ii) Two hours for children and adolescents who are 9 to 17 years of age; and

(iii) One hour for children who are 9 years of age or younger.

(B) After 24 hours, the patient's physician or the licensed medical professional who ordered the restraint or seclusion must see and assess the patient before issuing a new order for the use of restraint or seclusion for the management of violent or self-destructive behavior.

(C) Each order for restraint used to ensure the physical safety of the nonviolent or non-self-destructive patient may be renewed as authorized by the health care facility.

(g) A physician, licensed medical professional or a staff member who has completed the training criteria specified in subsection (6) of this section must monitor the condition of the patient who is restrained or secluded.

(h) Before a physician or licensed medical professional may order the restraint or seclusion of a patient under this section, they must have a working knowledge of health care facility policy regarding the use of restraint or seclusion.

(i) When restraint or seclusion is used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member or others, the patient must be seen face-to-face within one hour after the initiation of the restraint or seclusion by a physician, licensed medical professional or staff member trained in accordance with the requirements of subsection (6) of this section to evaluate the patient's:

(A) Reaction to the restraint or seclusion;

(B) Medical and behavioral condition; and

(C) Need to continue or terminate the restraint or seclusion.

(j) If the face-to-face evaluation specified in paragraph (i) of this subsection is conducted by a registered nurse or physician's assistant, the registered nurse or physician's assistant must consult with the attending physician or other licensed practitioner responsible for the care of the patient immediately after the completion of the one-hour face-to-face evaluation.

(k) The use of simultaneous restraint and seclusion is permitted only if the patient is continually monitored by an assigned, trained staff member in person or through the use of audio and video equipment that is in close proximity to the patient.

(L) When restraint or seclusion is used, there must be a notation made in the patient's medical record of the following:

(A) The required face-to-face medical and behavioral evaluation if restraint or seclusion is used to manage violent or self-destructive behavior;

(B) A description of the patient's behavior and the type of intervention used;

(C) If applicable, alternatives or other less restrictive interventions attempted prior to restraint or seclusion;

(D) The patient's condition or symptoms that warranted the use of restraint or seclusion; and

(E) The patient's response to the intervention used, including the rationale, if any, for continued use of the intervention.

(8)(a) The patient has the right to safe implementation of restraint or seclusion by trained health care facility staff members.

(b) Staff must be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment and providing care for a patient in restraint or seclusion:

(A) Before performing any of the actions specified in this subsection;

(B) As part of orientation; and

(C) Subsequently, on a periodic basis consistent with hospital or other behavioral health care facility policy.

(c) The health care facility shall require appropriate staff members to receive education, training and demonstrated knowledge based on the specific needs of the patient population in at least the following:

(A) Techniques to identify staff and patient behaviors, events and environmental factors that may trigger circumstances that require the use of restraint or seclusion;

(B) The use of nonphysical intervention skills;

(C) Choosing the least restrictive intervention available based on an individualized as-

sessment of the patient's medical or behavioral status or condition;

(D) The safe application and use of all types of restraint or seclusion used by the health care facility, including training in recognizing and responding to signs of physical and psychological distress, including but not limited to asphyxia;

(E) Clinical identification of specific behavioral changes that indicate when restraint or seclusion is no longer necessary;

(F) Monitoring the physical and psychological well-being of the patient being restrained or secluded, including but not limited to respiratory and circulatory status, skin integrity, vital signs and any requirements specified by health care facility policy associated with the required face-to-face evaluation of the patient; and

(G) The use of first aid techniques and certification in the use of cardiopulmonary resuscitation, including required periodic recertification.

(d) Individuals providing staff member training must be qualified as evidenced by education, training and experience in techniques used to address patients' behaviors.

(e) The health care facility shall document in each staff member's personnel records whether the training and demonstration of competency required by this subsection were successfully completed.

(9)(a) All health care facilities licensed by the Department of Human Services shall report any deaths associated with the use of seclusion or restraint. The facility shall include with its report the following information:

(A) Each death that occurs while a patient is in restraint or seclusion;

(B) Each death that occurs within 24 hours after the patient has been removed from restraint or seclusion, if the death is related to a patient's restraint or seclusion; and

(C) Each death known to the health care facility that occurs within one week after a patient has been removed from restraint or seclusion, if the death is related to the patient's restraint or seclusion.

(b) For the purposes of paragraph (a) of this subsection, a patient's death shall be deemed related to the patient's restraint or seclusion in instances including but not limited to deaths resulting from chest compression, restriction of breathing, asphyxiation or from prolonged immobility.

(c) Each death referenced in this subsection shall be reported to the department no later than 48 hours after the health care facility was notified of a patient's death.

(d) A staff member shall include in the patient's medical records the date and time when the patient's death was reported to the department.

(10) The rights provided under this section are in addition to, and not in lieu of, any other rights provided by statute or rule to patients receiving treatment for mental illness at a health care facility.

SECTION 4. (1) In accordance with applicable provisions of ORS chapter 183, the Director of the Department of Human Services may adopt rules necessary for the administration of sections 2 and 3 of this 2007 Act.

(2) The Department of Human Services may apply to any circuit court for an order compelling compliance with any rule adopted by the department under sections 2 and 3 of this 2007 Act. If the court finds that the defendant is not complying with any rule so adopted, the court shall grant an injunction requiring compliance. The court, on motion and affidavits, may grant a preliminary injunction ex parte upon such terms as are just. The depart-

ment need not give security before the issuance of any injunction under this section.

SECTION 5. A patient of a health care facility who is subject to the rights provided by sections 2 and 3 of this 2007 Act has a private right of action to enforce sections 2 and 3 of this 2007 Act.
