**HB 2023, Hospital Discharge for Mental Health Crisis, and HB 2948, HIPAA Clarification**
**By Rep. Alissa Keny-Guyer, May 18, 2015**

I'm here in support of HB 2023 and 2948, which passed unanimously by the House Health Care Committee and the full House. The bills were two of several bills brought to me by Jerry Gabay and Julia Magers, whom you may remember from your informational hearing last Sept.

Jerry, who can't be here today, lost his only child, Susanna, to suicide at age 21, and has made it his life mission to prevent this tragedy from happening to others. He is a member of the NAMI Oregon board of directors; co-chair of the Providence Health System's collaborative council for behavioral health, and a co-author of the Oregon Psychiatric Physician's Association suicide prevention checklists for which he received the Oregon Psychiatric Association's Access Award in 2013.

Fortunately Julie, who is on a similar life mission, is here today. After her daughter attempted suicide twice at age 16**,** she joined the NAMI Multnomah staff, where she hears from many families about the experiences that are sadly too familiar.

Suicide is a major issue in our state. For years, Oregon ranked between seventh and ninth in the country for suicides, but its rate has been increasing since 2000 at a much faster rate than the national average. According to the most recent data from the U.S. Centers of Disease Control and Prevention (CDC), in 2009-2010, Oregon has the 2nd highest suicide rate in the country and is the second leading cause of death among Oregonians aged 10 to 24.

In 2011, 685 Oregonians killed themselves, twice the number who died in vehicle crashes and six times the homicide rate. In 2012, it climbed to 709. The financial cost is high. In 2010, hospitalization costs for self-inflicted injury exceeded $41 million.

There are many challenges in filling the gaps of the fragmented Mental Health system. One is the revolving door in the ED, when people experience a Mental Health crisis. Another is the fear that providers have in disclosing information to those closest to patients, when it is often critical to their care. This is especially important for adolescents and young adults who suffer from an especially high rate of suicide.

**Jerry's testimony on 3/11/15** was "to make us aware of two things which may have saved Susanna's life, which might save others in the future, and which I believe are encapsulated in HB 2948 and HB 2023. The first item would be much greater communication between providers and caregivers (by blood or affinity). At minimum, providers must be encouraged to seek authorizations to communicate with appropriate supporters of the patient and then actually communicate. HB 2948 attempts to do this. There is ample literature indicating that extensive communication is a best practice for therapy and suicide prevention."

OCCAP (OR Council of Child and Adolescent Psychiatry) states that communication between family members of persons seeking treatment for mental illness and health care providers improves the quality of care, reduces the risk of suicide and self-harm, and encourages the use of community resources to improve overall outcomes.

Patients who are at least 14 years old may choose a family member or other support person as their lay caregiver.

During a mental health crisis, when there is often a huge need for coordination, HIPAA – which is often misunderstood – actually allows for communication in certain conditions.

HB 2948 clarifies the federal HIPAA Privacy Rule regarding conditions under which protected health information may be disclosed by a healthcare provider, without obtaining an authorization from the individual.

The Director of the Office of Civil Rights of the US Dept of Health and Human Services issued a clarification of the HIPAA Privacy Rule in January 2013 following the Sandy Hook and Aurora mass shootings. The Oregon DOJ and Legislative Counsel have confirmed that HB 2948 is consistent with HIPAA and the Privacy Rule.

The clarification enables continuity of care and clinically appropriate step down treatments with engagement by family or friends as appropriate.

We had compelling testimony in support of the bill from Jerry Gabay, Julie Magers, Julie's daughter, and several other families. It is also supported by the Oregon Alliance of Children's Programs and the Oregon College of Emergency Physicians (OCEP).

There are two amendments:

-4 adds back a civil immunity protection that was in the original draft and was removed without our noticing before passing the bill in the House. (Lorey's opinion) Backed by OCCAP and OPPA.

-5 names the bill after Jerry and Susan Gabay's daughter, Susanna Blake Gabay.

Jerry Gabay's 3/11/15 testimony contiues, "The second issue is that discharges from hospital care must be much better coordinated with the resources in the community and with whatever support system the patient has. Communication must be robust, rather than ignored, and the patient's support system engaged in the discharge process. HB 2023 is a giant step in that direction".

HB 2023 directs hospitals to adopt and enforce discharge policies for individuals that have been treated for mental health treatment. The policies must be publicly available and include, at a

minimum, encouraging the patient to sign an authorization for the disclosure of information that is necessary for a lay caregiver to participate in the patient's discharge planning and to provide appropriate post-discharge support.

"Encouraging" is meant to be in between just giving the patient the opportunity to sign a authorization form to identify a lay caregiver, on one hand, and pressuring the patient to sign it, on the other. I want to make it very clear that the intent is NOT to pressure or coerce a patient who is fragile into signing the form. It is meant to discuss why it is so beneficial to have a support person or persons who can help the patient when he or she leaves the hospital.

It must include discussing the patient's prescribed medications and the circumstances under which the patient or lay caregiver should seek immediate attention. The discharge policies must also include a process to ensure coordination of the patient's care and a transition from an acute care setting to outpatient treatment that may include community-based providers, peer support specialists, lay caregivers, and others who can execute the patient's plan following discharge.

The -5 clarifies some minor issues brought to me by Providence. The one I want to highlight is the 7-day goal for a follow up appointment on discharge. Since the 7-day goal is a CCO metric and is based on best practice, we want to ensure that hospital discharge policies aim for this same goal. While it's not a mandate, it is clear legislative intent that this be a goal. Requiring documentation about why the 7 day could not be met will help ensure that discharge staff work hard to find an appointment, but allows for providers to make an appointment a few days later if needed.

I appreciate the input from consumers, mental health providers, insurers, hospitals, and the Assoc of Hospitals and Health Systems, which has also been working on the Care Act to create discharge policies for mostly seniors who need help with post-discharge care.

http://www.comedsoc.org/Suicide_-_Oregon_Ranked_2nd.htm?m=66&s=520

http://www.oregonlive.com/living/index.ssf/2013/05/why_oregons_suicide_rate_is_am.html

**From Suicide check list**

"Misunderstandings by clinicians about the limitations created by HIPAA, FERPA, and state laws for preserving confidentiality of patients has caused unnecessary concern regarding disclosure of relevant clinical information. Communication between providers, patients, and family members/identified significant others needs to be recognized as a clinical best practice and deviations from this should occur only in rare and special circumstances."