H.46

Introduced by Representative Donahue of Northfield

Referred to Committee on

Date:

Subject: Health; mental health; miscellaneous

Statement of purpose of bill as introduced: This bill proposes to: (1) limit the categories of individuals who can obtain information about a patient's medical condition; (2) specify the membership requirements of designated agency and designated hospital programmatic committees and the Statewide Standing Committees for Adult Services and for Child and Family Services; (3) clarify patient rights related to voluntary admission; and (4) establish reporting requirements pertaining to the use of seclusion and restraint.

An act relating to miscellaneous provisions of mental health law

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Disclosure of Information to Third Parties * * *

Sec. 1. 18 V.S.A. § 7103 is amended to read:

§ 7103. DISCLOSURE OF INFORMATION

* * *

(b) ~~Nothing in this section shall preclude disclosure, upon proper inquiry, of information concerning medical condition to the individual's family, clergy,~~

1 ~~physician, attorney, the individual's health care agent under section 5264 of~~
2 ~~this title, a person to whom disclosure is authorized by a validly executed~~
3 ~~durable power of attorney for health care, or to an interested party.~~ [Repealed.]
4 * * *
5 * * * Standing Committees * * *
6 Sec. 2. 18 V.S.A. § 7209 is added to read:
7 § 7209. STATEWIDE STANDING COMMITTEES FOR ADULT
8 SERVICES AND FOR CHILD AND FAMILY SERVICES
9 (a) Programmatic statewide standing committees established in rule for
10 both adult services and for child and family services shall be composed of
11 between nine and 15 members each. A majority of the Standing Committee
12 for Adult Services shall be comprised of persons with lived experience of
13 mental conditions or psychiatric disability. A majority of the Standing
14 Committee for Child and Family Services shall be composed of family
15 members of children with lived experience of mental conditions or psychiatric
16 disability.
17 (b) Each Standing Committee shall meet at least one time per month.
18 (c)(1) The Standing Committees shall advise the Department of Mental
19 Health on the performance of the mental health system with respect to:
20 (A) the hiring of key management positions;
21 (B) the quality and responsiveness of services offered statewide;

1 (C) establishing priorities for resource allocation consistent with the
2 State system of care plan;
3 (D) policies that pertain to or significantly influence services; and
4 (E) review of complaint, grievance, and appeal data.
5 (2) The Standing Committees shall be involved in the agency
6 designation and redesignation process as established in rule.
7 Sec. 3. 18 V.S.A. § 7711 is added to read:
8 § 7711. PROGRAM QUALITY ADVISORY COMMITTEE
9 Each designated hospital as defined in 18 V.S.A. § 7101 and any successor
10 in interest to the Vermont State Hospital, such as the Vermont Psychiatric Care
11 Hospital, shall have a program quality advisory committee to ensure high
12 quality and experience of care. The standing advisory committees shall have
13 nonexclusionary membership composed, at a minimum, of five members. A
14 majority of each standing committee shall be persons with lived experience of
15 one or more mental conditions or psychiatric disability. Each standing
16 committee shall meet at least once every two months.
17 Sec. 4. 18 V.S.A. § 8902 is added to read:
18 § 8902. LOCAL PROGRAM STANDING COMMITTEES
19 Each designated agency shall have local program standing committees that
20 operate pursuant to rules adopted by the Department of Mental Health. Each
21 local program standing committee shall be composed, at a minimum, of five

1 members. A majority of each standing committee for adult services shall be
2 persons with lived experience of one or more mental conditions or psychiatric
3 disability. A majority of each standing committee for child and family services
4 shall be family members of children with lived experience of one or more
5 mental conditions or psychiatric disability. Each standing committee shall
6 meet at least once every two months.
7 Sec. 5. 2012 Acts and Resolves No. 79, Sec. 33a, as amended by 2015 Acts
8 and Resolves No. 21, Sec. 1, is further amended to read:
9 Sec. 33a. RULEMAKING
10 (a) The Commissioner of Mental Health shall adopt rules pursuant to 3
11 V.S.A. chapter 25 on emergency involuntary procedures for adults and
12 children in the custody or temporary custody of the Commissioner who are
13 admitted to a psychiatric inpatient unit. The rules shall establish standards that
14 meet or exceed and are consistent with standards set by the Centers for
15 Medicare and Medicaid Services regarding the use and reporting of seclusion,
16 restraint, and emergency involuntary medication. The rules shall also require
17 the personnel performing those emergency involuntary procedures to receive
18 training and certification on their use. Standards established by rule shall be
19 consistent with the policies set forth in the Department's final proposed rule, as
20 amended, on emergency involuntary procedures submitted to the Legislative

1 Committee on Administrative Rules on November 6, 2013, with the following
2 exceptions:
3 (1) Emergency involuntary medication shall only be ordered by a
4 psychiatrist, an advanced practice registered nurse licensed by the Vermont
5 Board of Nursing in psychiatric nursing, or a certified physician assistant
6 licensed by the State Board of Medical Practice and supervised by a
7 psychiatrist.
8 (2) Personal observation of an individual prior to ordering emergency
9 involuntary medication:
10 (A) Shall be conducted by a certified physician assistant licensed by
11 the State Board of Medical Practice and supervised by a psychiatrist if the
12 physician assistant is issuing the order.
13 (B) May be conducted by a psychiatrist or an advanced practice
14 registered nurse licensed by the Vermont Board of Nursing in psychiatric
15 nursing if the psychiatrist or advanced practice registered nurse is issuing the
16 order. If a psychiatrist or advanced practice registered nurse does not
17 personally observe the individual prior to ordering emergency involuntary
18 medication, the individual shall be observed by a registered nurse trained to
19 observe individuals for this purpose or by a physician assistant.
20 (3) The Emergency Involuntary Procedure Committee that operates
21 pursuant to rules adopted by the Department of Mental Health shall provide

1 oversight and recommendations to the Department regarding data collected on
2 both voluntary and involuntary patients. The majority of the Committee's
3 members shall either be individuals with lived experience of mental conditions
4 or psychiatric disability or family members or stakeholders from advocacy
5 organizations that represent such individuals. At least two members shall be
6 individuals with lived experience of mental conditions or psychiatric disability.
7 * * *
8 * * * Voluntary Admission * * *
9 Sec. 6. 18 V.S.A. § 7508 is amended to read:
10 § 7508. EMERGENCY EXAMINATION AND SECOND CERTIFICATION
11 * * *
12 (e)(1)(A) A person shall be deemed to be in the temporary custody of the
13 Commissioner when the first of the following occurs:
14 (i) a physician files an initial certification for the person while the
15 person is in a hospital; or
16 (ii) a person is certified by a psychiatrist to be a person in need of
17 treatment during an emergency examination.
18 (B) Temporary custody under this subsection shall continue until the
19 court issues an order pursuant to subsection 7617(b) of this title or the person
20 is discharged or released.
21 * * *

(3) All persons admitted voluntarily or involuntarily or held for admission shall receive a notice of rights as provided for in section 7701 of this title, which shall include contact information for Vermont Legal Aid, the Office of the Mental Health Care Ombudsman, and the mental health patient representative. The Department of Mental Health shall develop and regularly update informational material on available peer-run support services, which shall be provided to all persons admitted voluntarily or involuntarily or held for admission.

(4) A person held for an emergency examination may be admitted to an appropriate hospital at any time.

Sec. 7. 18 V.S.A. § 7503 is amended to read:

§ 7503. APPLICATION FOR VOLUNTARY ADMISSION

* * *

(b)(1) Before the person may be admitted as a voluntary patient, he or she shall give his or her consent in writing on a form adopted by the Department. The consent shall include a representation that the person understands that his or her treatment will involve inpatient status, that he or she desires to be admitted to the hospital, and that he or she consents to admission voluntarily, without any coercion or duress.

(2) Informed consent for voluntary admission shall include specific information about:

1 (A) the degree of the patient's ability to freely enter and leave the
2 physical hospital facility and to be discharged against medical advice;
3 (B) the authority of the hospital to detain patients for an assessment
4 of risk of harm to self or other pursuant to section 7504 of this title;
5 (C) the authority of the hospital to hold the patient involuntarily for
6 an emergency examination based on the outcome of that assessment pursuant
7 to section 7508 of this title; and
8 (D) the authority of the hospital to restrain or seclude a patient in an
9 emergency.
10 * * *
11 Sec. 8. 18 V.S.A. § 7701 is amended to read:
12 § 7701. NOTICE OF RIGHTS
13 The head of a hospital shall provide reasonable means and arrangements,
14 including the posting of excerpts from relevant statutes, for informing patients
15 of their right to discharge and other rights and for assisting them in making and
16 presenting requests for discharge or for application to have the patient's status
17 changed from involuntary to voluntary.
18 Sec. 9. 18 V.S.A. § 7709 is amended to read:
19 § 7709. CHANGE FROM INVOLUNTARY TO VOLUNTARY
20 At any time, a patient may, ~~with the permission of the head of the hospital~~
21 based upon criteria established by the Commissioner that ensures least

1 restrictive alternative treatment options to the extent that the safety of both the
2 patient and others can be achieved, have his or her status changed from
3 involuntary to voluntary upon making application as provided in section 7503
4 of this title, unless it is determined that voluntary treatment is not possible
5 while maintaining the safety of the patient and others.
6 * * * Seclusion and Restraint * * *
7 Sec. 10. 18 V.S.A. § 7703 is amended to read:
8 § 7703. TREATMENT
9 * * *
10 (b) The Department shall establish minimum standards for adequate
11 treatment as provided in this section, including requirements that, when
12 possible, psychiatric unit staff be used as the primary source to implement
13 emergency involuntary procedures such as seclusion and restraint. The
14 Department shall establish reporting requirements and maintain data regarding
15 the use of restraint and seclusion for all individuals receiving inpatient
16 hospitalization, regardless of whether they are under the custody of the
17 Commissioner. For the purpose of this subsection, seclusion shall include the
18 involuntary confinement of a patient in a sub-area of a hospital unit that
19 reduces access to activities in the general milieu or restricts the patient to the
20 patient's bedroom and a more limited number of rooms than those accessible

1 to patients in the general milieu, regardless of whether one patient is confined
2 to that area and regardless of whether designated staff are present in that area.
3 * * * Effective Date * * *
4 Sec. 11. EFFECTIVE DATE
5 This act shall take effect on July 1, 2021.