

1 H.46

2 Introduced by Representative Donahue of Northfield

3 Referred to Committee on

4 Date:

5 Subject: Health; mental health; miscellaneous

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

13 An act relating to miscellaneous provisions of mental health law

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

15 ~~*** Disclosure of Information to Third Parties ***~~

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

17 § 7103. DISCLOSURE OF INFORMATION

18

1 ~~(b) Nothing in this section shall preclude disclosure, upon proper inquiry,~~
2 ~~of information concerning medical condition to the individual's family, clergy,~~
3 ~~physician, attorney, the individual's health care agent under section 5264 of~~
4 ~~this title, a person to whom disclosure is authorized by a validly executed~~
5 ~~durable power of attorney for health care, or to an interested party. [Repealed.]~~

6 * * *

7 * * * Standing Committees * * *

8 Sec. 2. 18 V.S.A. § 7209 is added to read:

9 § 7209. STATEWIDE STANDING COMMITTEES FOR ADULT
10 SERVICES AND FOR CHILD AND FAMILY SERVICES

11 (a) Programmatic statewide standing committees established in rule for
12 both adult services and for child and family services shall be composed of
13 between nine and 15 members each. A majority of the Standing Committee
14 for Adult Services shall be comprised of persons with lived experience of
15 mental conditions or psychiatric disability. A majority of the Standing
16 Committee for Child and Family Services shall be composed of family
17 members of children with lived experience of mental conditions or psychiatric
18 disability.

19 (b) Each Standing Committee shall meet at least one time per month.

20 (c)(1) The Standing Committees shall advise the Department of Mental
21 Health on the performance of the mental health system with respect to.

1 ~~(A) the hiring of key management positions;~~

2 ~~(B) the quality and responsiveness of services offered statewide;~~

3 ~~(C) establishing priorities for resource allocation consistent with the~~
4 ~~State system of care plan;~~

5 ~~(D) policies that pertain to or significantly influence services; and~~

6 ~~(E) review of complaint, grievance, and appeal data.~~

7 ~~(2) The Standing Committees shall be involved in the agency~~
8 ~~designation and redesignation process as established in rule.~~

9 Sec. 3. 18 V.S.A. § 7711 is added to read:

10 § 7711. PROGRAM QUALITY ADVISORY COMMITTEE

11 Each designated hospital as defined in 18 V.S.A. § 7101 and any successor
12 in interest to the Vermont State Hospital, such as the Vermont Psychiatric Care
13 Hospital, shall have a program quality advisory committee to ensure high
14 quality and experience of care. The standing advisory committees shall have
15 nonexclusionary membership composed, at a minimum, of five members. A
16 majority of each standing committee shall be persons with lived experience of
17 one or more mental conditions or psychiatric disability. Each standing
18 committee shall meet at least once every two months.

19 Sec. 4. 18 V.S.A. § 8902 is added to read:

20 ~~§ 8902. LOCAL PROGRAM STANDING COMMITTEES~~

1 ~~Each designated agency shall have local program standing committees that~~
2 ~~operate pursuant to rules adopted by the Department of Mental Health. Each~~
3 ~~local program standing committee shall be composed, at a minimum, of five~~
4 ~~members. A majority of each standing committee for adult services shall be~~
5 ~~persons with lived experience of one or more mental conditions or psychiatric~~
6 ~~disability. A majority of each standing committee for child and family~~
7 ~~services shall be family members of children with lived experience of one or~~
8 ~~more mental conditions or psychiatric disability. Each standing committee~~
9 ~~shall meet at least once every two months.~~

10 Sec. 5. 2012 Acts and Resolves No. 79, Sec. 33a, as amended by 2015 Acts
11 and Resolves No. 21, Sec. 1, is further amended to read:

12 Sec. 33a. RULEMAKING

13 (a) The Commissioner of Mental Health shall adopt rules pursuant to 3
14 V.S.A. chapter 25 on emergency involuntary procedures for adults and
15 children in the custody or temporary custody of the Commissioner who are
16 admitted to a psychiatric inpatient unit. The rules shall establish standards that
17 meet or exceed and are consistent with standards set by the Centers for
18 Medicare and Medicaid Services regarding the use and reporting of seclusion,
19 restraint, and emergency involuntary medication. The rules shall also require
20 the personnel performing those emergency involuntary procedures to receive
21 ~~training and certification on their use. Standards established by rule shall be~~

1 ~~consistent with the policies set forth in the Department's final proposed rule,~~
2 as amended, on emergency involuntary procedures submitted to the Legislative
3 Committee on Administrative Rules on November 6, 2013, with the following
4 exceptions:

5 (1) Emergency involuntary medication shall only be ordered by a
6 psychiatrist, an advanced practice registered nurse licensed by the Vermont
7 Board of Nursing in psychiatric nursing, or a certified physician assistant
8 licensed by the State Board of Medical Practice and supervised by a
9 psychiatrist.

10 (2) Personal observation of an individual prior to ordering emergency
11 involuntary medication:

12 (A) Shall be conducted by a certified physician assistant licensed by
13 the State Board of Medical Practice and supervised by a psychiatrist if the
14 physician assistant is issuing the order.

15 (B) May be conducted by a psychiatrist or an advanced practice
16 registered nurse licensed by the Vermont Board of Nursing in psychiatric
17 nursing if the psychiatrist or advanced practice registered nurse is issuing the
18 order. If a psychiatrist or advanced practice registered nurse does not
19 personally observe the individual prior to ordering emergency involuntary
20 medication, the individual shall be observed by a registered nurse trained to
21 ~~observe individuals for this purpose or by a physician assistant.~~

1 ~~(2) The Emergency Involuntary Procedure Committee that operates~~
2 pursuant to rules adopted by the Department of Mental Health shall provide
3 oversight and recommendations to the Department regarding data collected on
4 both voluntary and involuntary patients. The majority of the Committee's
5 members shall either be individuals with lived experience of mental conditions
6 or psychiatric disability or family members or stakeholders from advocacy
7 organizations that represent such individuals. At least two members shall be
8 individuals with lived experience of mental conditions or psychiatric disability.

9 * * *

10 * * * Voluntary Admission * * *

11 Sec. 6. 18 V.S.A. § 7508 is amended to read:

12 § 7508. EMERGENCY EXAMINATION AND SECOND CERTIFICATION

13 * * *

14 (e)(1)(A) A person shall be deemed to be in the temporary custody of the
15 Commissioner when the first of the following occurs:

16 (i) a physician files an initial certification for the person while the
17 person is in a hospital; or

18 (ii) a person is certified by a psychiatrist to be a person in need of
19 treatment during an emergency examination.

1 ~~(P) Temporary custody under this subsection shall continue until the~~
2 court issues an order pursuant to subsection 7617(b) of this title or the person
3 is discharged or released.

4 * * *

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

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

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

16 § 7503. APPLICATION FOR VOLUNTARY ADMISSION

17 * * *

18 (b)(1) Before the person may be admitted as a voluntary patient, he or she
19 shall give his or her consent in writing on a form adopted by the Department.
20 The consent shall include a representation that the person understands that his
21 or her treatment will involve inpatient status, that he or she desires to be

1 ~~admitted to the hospital, and that he or she consents to admission voluntarily,~~
2 without any coercion or duress.

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

5 (A) the degree of the patient's ability to freely enter and leave the
6 physical hospital facility and to be discharged against medical advice;

7 (B) the authority of the hospital to detain patients for an assessment
8 of risk of harm to self or other pursuant to section 7504 of this title;

9 (C) the authority of the hospital to hold the patient involuntarily for
10 an emergency examination based on the outcome of that assessment pursuant
11 to section 7508 of this title; and

12 (D) the authority of the hospital to restrain or seclude a patient in an
13 emergency.

14 * * *

15 Sec. 8. 18 V.S.A. § 7701 is amended to read:

16 § 7701. NOTICE OF RIGHTS

17 The head of a hospital shall provide reasonable means and arrangements,
18 including the posting of excerpts from relevant statutes, for informing patients
19 of their right to discharge and other rights and for assisting them in making
20 and presenting requests for discharge or for application to have the patient's
21 status changed from involuntary to voluntary.

1 Sec. 9. 18 V.S.A. § 7700 is amended to read:

2 § 7709. CHANGE FROM INVOLUNTARY TO VOLUNTARY

3 At any time, a patient may, ~~with the permission of the head of the hospital~~
4 based upon criteria established by the Commissioner that ensures least
5 restrictive alternative treatment options to the extent that the safety of both the
6 patient and others can be achieved, have his or her status changed from
7 involuntary to voluntary upon making application as provided in section 7503
8 of this title, unless it is determined that voluntary treatment is not possible
9 while maintaining the safety of the patient and others.

10 * * * Seclusion and Restraint * * *

11 Sec. 10. 18 V.S.A. § 7703 is amended to read:

12 § 7703. TREATMENT

13 * * *

14 (b) The Department shall establish minimum standards for adequate
15 treatment as provided in this section, including requirements that, when
16 possible, psychiatric unit staff be used as the primary source to implement
17 emergency involuntary procedures such as seclusion and restraint. The
18 Department shall establish reporting requirements and maintain data regarding
19 the use of restraint and seclusion for all individuals receiving inpatient
20 hospitalization, regardless of whether they are under the custody of the
21 Commissioner. For the purpose of this subsection, seclusion shall include the

1 ~~involuntary confinement of a patient in a sub area of a hospital unit that~~
2 ~~reduces access to activities in the general milieu or restricts the patient to the~~
3 ~~patient's bedroom and a more limited number of rooms than those accessible~~
4 ~~to patients in the general milieu, regardless of whether one patient is confined~~
5 ~~to that area and regardless of whether designated staff are present in that area.~~

6 * * * Effective Date * * *

7 Sec. 11. EFFECTIVE DATE

8 ~~This act shall take effect on July 1, 2021.~~

~~Sec. 1. 18 V.S. 4 - § 7503 is amended to read:~~

~~§ 7502. APPLICATION FOR VOLUNTARY ADMISSION~~

~~* * *~~

~~(b) 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:~~

~~(1) the person understands that his or her treatment will involve inpatient status;~~

~~(2) that he or she the person desires to be admitted to the hospital, and;~~

~~(3) that he or she the person consents to admission voluntarily, without any coercion or duress; and~~

~~(4) the person understands that inpatient treatment may be on a locked unit and a requested discharge may be deferred if the treating physician~~

~~determines that the person is a person in need of treatment pursuant to section
7101 of this title.~~

Sec. 1. 18 V.S.A. § 7503 is amended to read:

§ 7503. APPLICATION FOR VOLUNTARY ADMISSION

** * **

(b) Before the person may be admitted as a voluntary patient, ~~he or she~~ the person shall give ~~his or her~~ consent in writing on a form adopted by the Department. The consent shall include a representation that:

(1) the person understands that ~~his or her~~ treatment will involve inpatient status;

(2) that ~~he or she~~ the person desires to be admitted to the hospital, ~~and;~~

(3) that ~~he or she~~ the person consents to admission voluntarily, without any coercion or duress; and

(4) the person understands that inpatient treatment may be on a locked unit and a requested discharge may be deferred if the treating physician determines that the person is a person in need of treatment pursuant to section 7101 of this title.

** * **

Sec. 2. 18 V.S.A. § 7701 is amended to read:

§ 7701. NOTICE OF RIGHTS

The head of a hospital shall provide reasonable means and arrangements, including the posting of excerpts from relevant statutes, for informing patients of their right to discharge and other rights and for assisting them in making and presenting requests for discharge or for application to have the patient's status changed from involuntary to voluntary.

Sec. 3. 18 V.S.A. § 7703 is amended to read:

§ 7703. TREATMENT

** * **

(b) The Department shall establish minimum standards for adequate treatment as provided in this section, including requirements that, when possible, psychiatric unit staff be used as the primary source to implement emergency involuntary procedures such as seclusion and restraint. The Department shall oversee and collect information and report on data regarding the use of emergency involuntary procedures for patients admitted to a psychiatric unit regardless of whether the patient is under the care and custody of the Commissioner.

Sec. 4. 2018 Acts and Resolves No. 200, Sec. 7 is amended to read:

Sec. 7. DATA COLLECTION AND REPORT; PATIENTS SEEKING

MENTAL HEALTH CARE IN HOSPITAL SETTINGS

(a) Pursuant to the authority granted to the Commissioner of Mental Health under 18 V.S.A. § 7401, the Commissioner shall collect the following

information from hospitals in the State that have either an inpatient psychiatric unit or emergency department receiving patients with psychiatric health needs:

(1) the number of individuals seeking psychiatric care voluntarily and the number of individuals in the custody or temporary custody of the Commissioner who are admitted to inpatient psychiatric units and the corresponding lengths of stay on the unit; and

(2) the lengths of stay in emergency departments for individuals seeking psychiatric care voluntarily and for individuals in the custody or temporary custody of the Commissioner; ~~and~~

~~(3) data regarding emergency involuntary procedures performed in an emergency department on individuals seeking psychiatric care.~~

(b) On or before January 15 of each year between ~~2019 and 2021~~ 2021 and 2023, the Commissioner of Mental Health shall submit a written report to the House Committee on Health Care and to the Senate Committee on Health and Welfare containing the data collected pursuant to subsection (a) of this section during the previous calendar year.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2021.