

Bill No. CS for CS for CS for CS for SB 700

Amendment No. ____ Barcode 381714

CHAMBER ACTION

Senate

House

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Senators Smith and Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 2, between lines 27 and 28,

insert:

Section 2. Section 394.459, Florida Statutes, is amended to read:

394.459 Rights of patients.--

(1) RIGHT TO INDIVIDUAL DIGNITY.--It is the policy of this state that the individual dignity of the patient shall be respected at all times and upon all occasions, including any occasion when the patient is taken into custody, held, or transported. Procedures, facilities, vehicles, and restraining devices utilized for criminals or those accused of crime shall not be used in connection with persons who have a mental illness, except for the protection of the patient or others. Persons who have a mental illness but who are not charged with a criminal offense shall not be detained or incarcerated in the jails of this state. A person who is receiving treatment for mental illness ~~in a facility~~ shall not

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1 be deprived of any constitutional rights. However, if such a
2 person is adjudicated incapacitated, his or her rights may be
3 limited to the same extent the rights of any incapacitated
4 person are limited by law.

5 (2) RIGHT TO TREATMENT.--

6 (a) A person shall not be denied treatment for mental
7 illness and services shall not be delayed at a receiving or
8 treatment facility because of inability to pay. However, every
9 reasonable effort to collect appropriate reimbursement for the
10 cost of providing mental health services to persons able to
11 pay for services, including insurance or third-party payments,
12 shall be made by facilities providing services pursuant to
13 this part.

14 (b) It is further the policy of the state that the
15 least restrictive appropriate available treatment be utilized
16 based on the individual needs and best interests of the
17 patient and consistent with optimum improvement of the
18 patient's condition.

19 (c) Each person who remains at a receiving or
20 treatment facility for more than 12 hours shall be given a
21 physical examination by a health practitioner authorized by
22 law to give such examinations, within 24 hours after arrival
23 at such facility.

24 (d) Every patient in a facility shall be afforded the
25 opportunity to participate in activities designed to enhance
26 self-image and the beneficial effects of other treatments, as
27 determined by the facility.

28 (e) Not more than 5 days after admission to a
29 facility, each patient shall have and receive an
30 individualized treatment plan in writing which the patient has
31 had an opportunity to assist in preparing and to review prior

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1 to its implementation. The plan shall include a space for the
2 patient's comments.

3 (3) RIGHT TO EXPRESS AND INFORMED PATIENT CONSENT.--

4 (a) Each patient entering treatment ~~a facility~~ shall
5 be asked to give express and informed consent for admission
6 and treatment. If the patient has been adjudicated
7 incapacitated or found to be incompetent to consent to
8 treatment, express and informed consent to treatment shall be
9 sought instead from the patient's guardian or guardian
10 advocate. If the patient is a minor, express and informed
11 consent for admission and treatment shall also be requested
12 from the patient's guardian. Express and informed consent for
13 admission and treatment of a patient under 18 years of age
14 shall be required from the patient's guardian, unless the
15 minor is seeking outpatient crisis intervention services under
16 s. 394.4784. Express and informed consent for admission and
17 treatment given by a patient who is under 18 years of age
18 shall not be a condition of admission when the patient's
19 guardian gives express and informed consent for the patient's
20 admission pursuant to s. 394.463 or s. 394.467. Prior to
21 giving consent, the following information shall be disclosed
22 to the patient, or to the patient's guardian if the patient is
23 18 years of age or older and has been adjudicated
24 incapacitated, or to the patient's guardian advocate if the
25 patient has been found to be incompetent to consent to
26 treatment, or to both the patient and the guardian if the
27 patient is a minor: the reason for admission, the proposed
28 treatment, the purpose of the treatment to be provided, the
29 common side effects thereof, alternative treatment modalities,
30 the approximate length of care, and that any consent given by
31 a patient may be revoked orally or in writing prior to or

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1 during the treatment period by the patient, the guardian
2 advocate, or the guardian.

3 (b) In the case of medical procedures requiring the
4 use of a general anesthetic or electroconvulsive treatment,
5 and prior to performing the procedure, express and informed
6 consent shall be obtained from the patient if the patient is
7 legally competent, from the guardian of a minor patient, from
8 the guardian of a patient who has been adjudicated
9 incapacitated, or from the guardian advocate of the patient if
10 the guardian advocate has been given express court authority
11 to consent to medical procedures or electroconvulsive
12 treatment as provided under s. 394.4598.

13 (c) When the department is the legal guardian of a
14 patient, or is the custodian of a patient whose physician is
15 unwilling to perform a medical procedure, including an
16 electroconvulsive treatment, based solely on the patient's
17 consent and whose guardian or guardian advocate is unknown or
18 unlocatable, the court shall hold a hearing to determine the
19 medical necessity of the medical procedure. The patient shall
20 be physically present, unless the patient's medical condition
21 precludes such presence, represented by counsel, and provided
22 the right and opportunity to be confronted with, and to
23 cross-examine, all witnesses alleging the medical necessity of
24 such procedure. In such proceedings, the burden of proof by
25 clear and convincing evidence shall be on the party alleging
26 the medical necessity of the procedure.

27 (d) The administrator of a receiving or treatment
28 facility may, upon the recommendation of the patient's
29 attending physician, authorize emergency medical treatment,
30 including a surgical procedure, if such treatment is deemed
31 lifesaving, or if the situation threatens serious bodily harm

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1 to the patient, and permission of the patient or the patient's
 2 guardian or guardian advocate cannot be obtained.

3 (4) QUALITY OF TREATMENT.--

4 (a) Each patient ~~in a facility~~ shall receive services,
 5 including, for a patient placed under s. 394.4655, those
 6 services included in the court order which are suited to his
 7 or her needs, and which shall be administered skillfully,
 8 safely, and humanely with full respect for the patient's
 9 dignity and personal integrity. Each patient shall receive
 10 such medical, vocational, social, educational, and
 11 rehabilitative services as his or her condition requires in
 12 order to live successfully in ~~to bring about an early return~~
 13 ~~to~~ the community. In order to achieve this goal, the
 14 department is directed to coordinate its mental health
 15 programs with all other programs of the department and other
 16 state agencies.

17 (b) Receiving and treatment facilities shall develop
 18 and maintain, in a form accessible to and readily
 19 understandable by patients, the following:

20 1. Criteria, procedures, and required staff training
 21 for any use of close or elevated levels of supervision, of
 22 restraint, seclusion, or isolation, or of emergency treatment
 23 orders, and for the use of bodily control and physical
 24 management techniques.

25 2. Procedures for documenting, monitoring, and
 26 requiring clinical review of all uses of the procedures
 27 described in subparagraph 1. and for documenting and requiring
 28 review of any incidents resulting in injury to patients.

29 3. A system for the review of complaints by patients
 30 or their families or guardians.

31 (c) A facility may not use seclusion or restraint for

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1 punishment, to compensate for inadequate staffing, or for the
2 convenience of staff. Facilities shall ensure that all staff
3 are made aware of these restrictions on the use of seclusion
4 and restraint and shall make and maintain records which
5 demonstrate that this information has been conveyed to
6 individual staff members.

7 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

8 (a) Each person receiving services in a facility
9 providing mental health services under this part has the right
10 to communicate freely and privately with persons outside the
11 facility unless it is determined that such communication is
12 likely to be harmful to the person or others. Each facility
13 shall make available as soon as reasonably possible to persons
14 receiving services a telephone that allows for free local
15 calls and access to a long-distance service. A facility is
16 not required to pay the costs of a patient's long-distance
17 calls. The telephone shall be readily accessible to the
18 patient and shall be placed so that the patient may use it to
19 communicate privately and confidentially. The facility may
20 establish reasonable rules for the use of this telephone,
21 provided that the rules do not interfere with a patient's
22 access to a telephone to report abuse pursuant to paragraph
23 (e).

24 (b) Each patient admitted to a facility under the
25 provisions of this part shall be allowed to receive, send, and
26 mail sealed, unopened correspondence; and no patient's
27 incoming or outgoing correspondence shall be opened, delayed,
28 held, or censored by the facility unless there is reason to
29 believe that it contains items or substances which may be
30 harmful to the patient or others, in which case the
31 administrator may direct reasonable examination of such mail

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1 and may regulate the disposition of such items or substances.

2 (c) Each facility must permit immediate access to any
3 patient, subject to the patient's right to deny or withdraw
4 consent at any time, by the patient's family members,
5 guardian, guardian advocate, representative, Florida statewide
6 or local advocacy council, or attorney, unless such access
7 would be detrimental to the patient. If a patient's right to
8 communicate or to receive visitors is restricted by the
9 facility, written notice of such restriction and the reasons
10 for the restriction shall be served on the patient, the
11 patient's attorney, and the patient's guardian, guardian
12 advocate, or representative; and such restriction shall be
13 recorded on the patient's clinical record with the reasons
14 therefor. The restriction of a patient's right to communicate
15 or to receive visitors shall be reviewed at least every 7
16 days. The right to communicate or receive visitors shall not
17 be restricted as a means of punishment. Nothing in this
18 paragraph shall be construed to limit the provisions of
19 paragraph (d).

20 (d) Each facility shall establish reasonable rules
21 governing visitors, visiting hours, and the use of telephones
22 by patients in the least restrictive possible manner.
23 Patients shall have the right to contact and to receive
24 communication from their attorneys at any reasonable time.

25 (e) Each patient receiving mental health treatment in
26 any facility shall have ready access to a telephone in order
27 to report an alleged abuse. The facility staff shall orally
28 and in writing inform each patient of the procedure for
29 reporting abuse and shall make every reasonable effort to
30 present the information in a language the patient understands.

31 A written copy of that procedure, including the telephone

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1 number of the central abuse hotline and reporting forms, shall
2 be posted in plain view.

3 (f) The department shall adopt rules providing a
4 procedure for reporting abuse. Facility staff shall be
5 required, as a condition of employment, to become familiar
6 with the requirements and procedures for the reporting of
7 abuse.

8 (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF
9 PATIENTS.--A patient's right to the possession of his or her
10 clothing and personal effects shall be respected. The
11 facility may take temporary custody of such effects when
12 required for medical and safety reasons. A patient's clothing
13 and personal effects shall be inventoried upon their removal
14 into temporary custody. Copies of this inventory shall be
15 given to the patient and to the patient's guardian, guardian
16 advocate, or representative and shall be recorded in the
17 patient's clinical record. This inventory may be amended upon
18 the request of the patient or the patient's guardian, guardian
19 advocate, or representative. The inventory and any amendments
20 to it must be witnessed by two members of the facility staff
21 and by the patient, if able. All of a patient's clothing and
22 personal effects held by the facility shall be returned to the
23 patient immediately upon the discharge or transfer of the
24 patient from the facility, unless such return would be
25 detrimental to the patient. If personal effects are not
26 returned to the patient, the reason must be documented in the
27 clinical record along with the disposition of the clothing and
28 personal effects, which may be given instead to the patient's
29 guardian, guardian advocate, or representative. As soon as
30 practicable after an emergency transfer of a patient, the
31 patient's clothing and personal effects shall be transferred

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1 to the patient's new location, together with a copy of the
2 inventory and any amendments, unless an alternate plan is
3 approved by the patient, if able, and by the patient's
4 guardian, guardian advocate, or representative.

5 (7) VOTING IN PUBLIC ELECTIONS.--A patient ~~in a~~
6 ~~facility~~ who is eligible to vote according to the laws of the
7 state has the right to vote in the primary and general
8 elections. The department shall establish rules to enable
9 patients to obtain voter registration forms, applications for
10 absentee ballots, and absentee ballots.

11 (8) HABEAS CORPUS.--

12 (a) At any time, and without notice, a person held in
13 a receiving or treatment facility, or a relative, friend,
14 guardian, guardian advocate, representative, or attorney, or
15 the department, on behalf of such person, may petition for a
16 writ of habeas corpus to question the cause and legality of
17 such detention and request that the court order a return to
18 the writ in accordance with chapter 79. Each patient held in
19 a facility shall receive a written notice of the right to
20 petition for a writ of habeas corpus.

21 (b) At any time, and without notice, a person who is a
22 patient in a receiving or treatment facility, or a relative,
23 friend, guardian, guardian advocate, representative, or
24 attorney, or the department, on behalf of such person, may
25 file a petition in the circuit court in the county where the
26 patient is being held alleging that the patient is being
27 unjustly denied a right or privilege granted herein or that a
28 procedure authorized herein is being abused. Upon the filing
29 of such a petition, the court shall have the authority to
30 conduct a judicial inquiry and to issue any order needed to
31 correct an abuse of the provisions of this part.

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1 (c) The administrator of any receiving or treatment
2 facility receiving a petition under this subsection shall file
3 the petition with the clerk of the court on the next court
4 working day.

5 (d) No fee shall be charged for the filing of a
6 petition under this subsection.

7 (9) VIOLATIONS.--The department shall report to the
8 Agency for Health Care Administration any violation of the
9 rights or privileges of patients, or of any procedures
10 provided under this part, by any facility or professional
11 licensed or regulated by the agency. The agency is authorized
12 to impose any sanction authorized for violation of this part,
13 based solely on the investigation and findings of the
14 department.

15 (10) LIABILITY FOR VIOLATIONS.--Any person who
16 violates or abuses any rights or privileges of patients
17 provided by this part is liable for damages as determined by
18 law. Any person who acts in good faith in compliance with the
19 provisions of this part is immune from civil or criminal
20 liability for his or her actions in connection with the
21 admission, diagnosis, treatment, or discharge of a patient to
22 or from a facility. However, this section does not relieve
23 any person from liability if such person commits negligence.

24 (11) RIGHT TO PARTICIPATE IN TREATMENT AND DISCHARGE
25 PLANNING.--The patient shall have the opportunity to
26 participate in treatment and discharge planning and shall be
27 notified in writing of his or her right, upon discharge from
28 the facility, to seek treatment from the professional or
29 agency of the patient's choice.

30 (12) POSTING OF NOTICE OF RIGHTS OF PATIENTS.--Each
31 facility shall post a notice listing and describing, in the

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1 language and terminology that the persons to whom the notice
2 is addressed can understand, the rights provided in this
3 section. This notice shall include a statement that
4 provisions of the federal Americans with Disabilities Act
5 apply and the name and telephone number of a person to contact
6 for further information. This notice shall be posted in a
7 place readily accessible to patients and in a format easily
8 seen by patients. This notice shall include the telephone
9 numbers of the Florida local advocacy council and Advocacy
10 Center for Persons with Disabilities, Inc.

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12 (Redesignate subsequent sections.)

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15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 On page 1, line 5, after the semicolon,

18

19 insert:

20 amending s. 394.459, F.S., relating to the
21 rights of patients; clarifying those rights
22 that are applicable to individuals receiving
23 treatment for mental illness; requiring express
24 and informed consent prior to treatment;

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