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S. 36, An act relating to permitting an arrest without a warrant for assaults and threats against health care workers and disorderly conduct at health care facilities

Testimony to House Judiciary Committee, April 4, 2023

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The Vermont State Survey Agency surveys health care entities to determine compliance with the Federal Conditions of Participation. Hospitals are surveyed for compliance at regular intervals per the Centers for Medicare and Medicaid Services guidance. If a hospital is found to be out of compliance with a regulation, our agency cites them for noncompliance and require them to submit a plan of correction. We pay another visit to the hospital to assure that they have come back in compliance with the regulation. If a hospital does not come back into compliance, they risk decertification from the Centers for Medicare and Medicaid Services and they cannot bill Medicare or Medicaid for services provided.

#### Acute Care Hospital Conditions of Participation: Patient's Rights

A hospital must protect and promote each patient's rights that apply to all patients regardless of diagnosis and to all parts of the hospital.

#### Standards

The Patient has the right to receive care in a safe setting. The intent of this standard is that each patient receives care in a setting that a reasonable person would consider safe.

The patient has the right to be free from all forms of abuse or harassment. The intent of this standard is to prohibit all forms of abuse, neglect, and harassment whether from staff, other patients, or visitors.

Restraint and seclusion. All patients have the right to be free from physical or mental abuse, and corporal punishment. All patients have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Restraint or seclusion may only be imposed to ensure the immediate physical safety of the patient, a staff member, or others and must be discontinued at the earliest possible time.

The decision to use a restraint or seclusion is not driven by diagnosis, but by a comprehensive individual patient assessment.

CMS does not consider the use of weapons in the application of restraint or seclusion as a safe, appropriate health care intervention. Weapon includes pepper spray, mace, night sticks, tasers, cattle prods, stun guns, and pistols. If a weapon is used by security or law enforcement personnel on a person in a hospital to protect people or hospital property from harm, CMS expects the situation to be handled as a criminal activity and the perpetrator to be placed in the custody of law enforcement. The use of such devices are considered law enforcement restraint devices and would not be considered safe, appropriate health care interventions for use by hospital staff to restrain patients. The law enforcement officers who maintain custody and direct supervision of their prisoner (the hospital patient) are responsible for the use, application, and monitoring these restrictive devices in accordance with Federal and State law. The hospital is still responsible for an appropriate patient assessment and the provision of safe, appropriate care to its patient, (or the law enforcement officer's prisoner).

Restraint or seclusion: Staff Training requirements. The patient has the right to safe implementation of restraint or seclusion by trained staff. Staff training and education play a critical role in the reduction of restraint and seclusion use in a hospital. Staff training must require appropriate staff to have education, training and demonstrated knowledge based on the specific needs of the patient population in at least:

- Techniques to identify staff and patient behaviors, events, and environmental factors that may trigger circumstances that require the use of restraint or seclusion.
- The use of nonphysical intervention skills, choosing the least restrictive intervention based on an individualized assessment of the patient's medical or behavioral status or condition.
- The safe application and use of all types of restraint or seclusion used in the hospital and how to recognize and respond to signs of physical and psychological distress.
- Monitoring the physical and psychological well-being of the patient or who is restrained or secluded, including but not limited to, respiratory and circulatory status, skin integrity, vital signs and any special requirements specified by hospital policy associated with the 1 hour face-to-face evaluation.
- Clinical identification of specific behavioral changes that indicate that the restraint or seclusion is no longer necessary. The use of restraint or seclusion must be ended at the earliest possible time regardless of the length of time identified in the physician order.