



Testimony Narrative

April 14, 2017

HB 2836-1: Requiring Oregon Health Authority to conduct study of effectiveness of Oregon Integrated and Coordinated Health Care Delivery System in improving health outcomes for medical assistance recipients.

Presenter: Micky Logan, J.D., Legal Affairs Director, Oregon State Hospital

Good morning, Chairman Greenlick, Vice-Chairs Hayden and Nosse, Members of the Committee. I am Micky Logan, the Legal Affairs Director at the Oregon State Hospital (“OSH”). As the Legal Affairs Director, I serve as the Executive Director of the State Hospital Review Panel and the liaison to the Psychiatric Security Review Board (“PSRB”). I am here to testify in support of HB 2836-1 and to answer any questions that you may have.

Clarity for Patients, Public, Medical Providers and the PSRB

As you may know, the PSRB has jurisdiction over people who were found by courts to be guilty except for insanity (“GEI”). The PSRB determines when those people may leave the Oregon State Hospital (“OSH”), where they may live in the community, and under what conditions. Until recently, OSH, community providers, patients, their attorneys, and treatment providers shared information with the PSRB with the understanding that patients’ personal health information would remain confidential, which is consistent with federal and state HIPAA laws. A recent appellate opinion about HIPAA and public agencies has led to ambiguity and confusion about whether patients’ medical records retain confidentiality after they have been given into the PSRB’s possession.

HB 2836-1 clarifies existing confidentiality laws so there is unambiguous language around what is and what is not confidential within the PSRB’s exhibit file. This will in turn allow the PSRB to respond to public records requests faster as well as avoid costly and time-consuming litigation which is a risk if current law is not amended. While the bill would protect confidential medical records, it would not deny the public all access to information about the patient. PSRB hearings are open to the public, as are its orders and recordings of the hearings, which will remain true under HB 2836-1, if passed.

Since 1978, the PSRB has protected the public by monitoring the clinical progress of those individuals who were found guilty except for insanity (GEI). Patients—and their treatment teams—have long relied on the sharing of clinical information to create treatment care plans and support patients as they move forward in recovery. The PSRB does not provide any direct mental health treatment; therefore, medical providers, both at OSH as well as private and county providers in the community, submit medical records to the PSRB on a regular basis to assist the PSRB with its decision making. All of these provider agencies are protected HIPAA entities.

Patients' statements to their mental health providers about their experiences help providers treat them and assess risk. Patients' knowledge that their statements will remain confidential encourages them to share those thoughts and experiences candidly, and to be expansive when talking with their treatment provider. This concept also builds therapeutic rapport. The PSRB's current recidivism rate is under 1% and has been since 2013. The most important reason for this is the care the PSRB takes in deciding on appropriate placement of those under its jurisdiction. In its deliberations, the PSRB must decide, based on the evidence presented at the patient's hearing: whether the patient continues to have a mental illness and remains dangerous such that the patient should stay under PSRB jurisdiction and if so, at what level of security the patient should be supervised to best ensure public safety. The PSRB's placement decisions rely almost exclusively on medical records and reports to determine the proper level of supervision/conditions of release for each patient. These determinations depend on the information being accurate and timely. Disclosure between patients and their treatment providers increases the quality of information coming to the PSRB, which, in turn, allows the PSRB to make the most informed decision about the patient's safety. If patients withhold information from their treatment providers because they feel their medical records are at risk of disclosure to the public, the providers' diagnoses and treatment recommendations would suffer and would result in less information to the PSRB. This would leave the PSRB to make jurisdiction and placement decisions based on a record that cannot help but be incomplete. Such a climate would contribute to placement errors and a possible increase in recidivism from patients whose danger level the PSRB underestimates because it lacked sufficient information to make an informed decision. This reduces public safety, the foremost duty of the PSRB.

Alternatively, if the PSRB is getting insufficient information, it may choose to keep a patient at OSH much longer than necessary. This would be an expensive and unfortunate result of the restraint on information sharing. For these reasons, the Oregon Health Authority and the Oregon State Hospital support HB 2836-1, and request your support as well. Thank you.