HB 631 -- MENTAL HEALTH PATIENT ADMISSIONS

SPONSOR: Green

This bill specifies that at the time a patient is voluntarily admitted to a mental health facility, the identity and contact information of the person to be notified in case of an emergency must be entered in that patient's clinical record.

At the time a patient is admitted to a mental health facility for involuntary examination or placement or when a petition for involuntary placement is filed, the names, addresses, and telephone numbers of the patient's guardian, or representative if the patient has no guardian, and the patient's attorney must also be entered in the patient's clinical record. If the patient has no guardian, the patient must be asked to designate a representative. If the patient is unable or unwilling to designate a representative, the facility must select a representative after consulting with the patient regarding that selection and the patient has the authority to request a replacement for any such representative so selected. Where the mental health facility selects a representative, first preference is to be given to a health care surrogate if one has been previously selected by the patient and if the patient has not previously selected a health care surrogate, the selection, except for good cause documented in the patient's clinical record, must be made from the following list in the order of listing: the patient's spouse; an adult child of the patient; a parent of the patient; the adult next-of-kin of the patient; an adult friend of the patient.

The bill prohibits the following individuals from being a patient's representative: a licensed professional providing services to the patient, an employee of a facility providing direct services to the patient, a department employee, a person providing other substantial services to the patient in a professional or business capacity, or a creditor of the patient.

Notice of a voluntary patient's admission must be given only at the request of the patient; except that, in an emergency, notice must be given as determined by the mental health facility. If notice is required to be given, the notice must be given to the patient and the patient's guardian, attorney, and representative.

If notice is required to be given to a patient, it must be given both orally and in writing in the language and terminology that the patient can understand, and, if needed, the mental health facility must provide an interpreter for the patient. Notice to a patient's guardian, attorney, and representative must be given by registered or certified mail with the receipts attached to the patient's

clinical record. Hand delivery by a facility employee may be used as an alternative with delivery documented in the clinical record. If notice is given by an attorney for the department, a certificate of service is sufficient to document the service.

A mental health facility must give prompt notice of the location of a patient who is being involuntarily held for examination by telephone or in person within 24 hours of the patient's arrival at the facility unless the patient requests that no notification be made. Contact attempts must be documented in the patient's clinical record and begin as soon as reasonably possible after the patient's arrival.

The bills specifies information that must be contained in a written notice of the filing of a petition for involuntary placement. A mental health facility must provide notice of a patient's involuntary admission on the next regular business day after the patient's arrival at the facility.

If a patient is to be transferred from one mental health facility to another, notice must be given by the facility where the patient is located prior to the transfer.

The chief administrative officer of a mental health facility or his or her designee is authorized to petition the circuit court for the appointment of a guardian advocate based upon the opinion of a psychiatrist that the patient is incompetent to consent to treatment. If the court finds that a patient is incompetent to consent to treatment and has not been adjudicated incapacitated and a guardian with the authority to consent to mental health treatment appointed, it must appoint a guardian advocate.

The patient has the right to have an attorney represent him or her at the hearing. If the person is indigent, the court must appoint the office of the public defender to represent him or her at the hearing. The patient has the right to testify, cross-examine witnesses, and present witnesses. The proceeding must be recorded either electronically or stenographically, and testimony must be provided under oath. A guardian advocate is required to meet the qualifications of a guardian as specified in Section 475, RSMo, except certain professionals are prohibited from being appointed. A person who is appointed as a guardian advocate must agree to the appointment.

A facility requesting appointment of a guardian advocate must, prior to the appointment, provide the prospective guardian advocate with information about the duties and responsibilities of guardian advocates including the information about the ethics of medical decision making. Before asking a guardian advocate to give consent

to treatment for a patient, the facility must provide to the guardian advocate sufficient information so that the guardian advocate can decide whether to give express and informed consent to the treatment including information that the treatment is essential to the care of the patient, and that the treatment does not present an unreasonable risk of serious, hazardous, or irreversible side effects. Before giving consent to treatment, the guardian advocate must meet and talk with the patient's physician in person, if at all possible, and by telephone, if not. The decision of the guardian advocate may be reviewed by the court upon petition of the patient's attorney, the patient's family, or the facility administrator.

When possible, prior to a guardian advocate exercising their authority, the guardian advocate must attend a training course approved by the court that is not less than four hours and must include, at minimum, information about patient rights, psychotropic medications, diagnosis of mental illness, the ethics of medical decision making, and duties of guardian advocates. If a guardian advocate is unable to attend a training course due to being out of state, the court must provide all necessary training materials and information to the guardian advocate in lieu of attending the training course.

The information to be supplied to prospective guardian advocates prior to their appointment and the training course for guardian advocates must be developed and completed through a course developed by the Department of Mental Health, approved by the Missouri Supreme Court, and taught by a court-approved organization. Court-approved organizations may include community or junior colleges, guardianship organizations, and local bar associations or the Missouri Bar Association. The court may, in its discretion, waive some or all of the training requirements for guardian advocates or impose additional requirements. The circuit court must make its decision to appoint on a case-by-case basis and, in making its decision, must consider the experience and education of the guardian advocate, the duties assigned to the guardian advocate, and the needs of the patient.

In selecting a guardian advocate, the circuit court must give preference to a health care surrogate, if one has already been designated by the patient. If the patient has not previously selected a health care surrogate, except for good cause documented in the court record, the selection must be made from the following list in the order of listing: the patient's spouse; an adult child of the patient; a parent of the patient; the adult next-of-kin of the patient; an adult friend of the patient; an adult trained and willing to serve as guardian advocate for the patient.

If a guardian with the authority to consent to medical treatment has not already been appointed or if the patient has not already designated a health care surrogate, the court may authorize the guardian advocate to consent to medical treatment, as well as mental health treatment. Unless the guardian advocate has sought and received express court approval in a proceeding separate from the proceeding to determine the competence of the patient to consent to medical treatment, the guardian advocate must not consent to abortion, sterilization, electroconvulsive treatment, psychosurgery, or experimental treatments that have not been approved by a federally approved institutional review board in accordance with federal regulations.

The court must base its decision on evidence that the treatment or procedure is essential to the care of the patient and that the treatment does not present an unreasonable risk of serious, hazardous, or irreversible side effects, and the court must follow the procedures specified.

The guardian advocate must be discharged when the patient is discharged from an order for involuntary outpatient placement or involuntary inpatient placement or when the patient is transferred from involuntary to voluntary status. The court or a hearing officer must consider the competence of the patient and may consider an involuntarily placed patient’s competence to consent to treatment at any hearing. Upon sufficient evidence, the court may restore, or the hearing officer may recommend that the court restore, the patient’s competence. A copy of the order restoring competence or the certificate of discharge containing the restoration of competence must be provided to the patient and the guardian advocate.