



Patient Access to Support Persons while in a Special Inpatient Care Facility (SICF) -- FACT SHEET--

In response to the COVID-19 pandemic, many Oregon hospitals revised their entry policies in order to protect the health of patients, providers, and staff. As a result, SB 1606 (2020 Special Session 1 Oregon Laws, Chapter 20) was passed to ensure Oregonian's with disabilities are protected. The new law has several requirements, including a requirement that hospitals must allow certain patients to have a support person with them at the hospital and to inform those patients of that right. The rules make these protections permanent for patients both during and after the pandemic.

In accordance with ORS 442.015, the definition of hospital includes a special inpatient care facility (SICF) as defined by the Oregon Health Authority (OHA) in administrative rule. As such, an SICF licensed by the OHA is required to comply with the requirements of 2020 Special Session 1 Oregon Laws, Chapter 20. While the OHA has adopted permanent rules for hospitals under Oregon Administrative Rules chapter 333, divisions 501 and 505, the OHA has not yet convened a rules advisory committee to amend SICF rules in Oregon Administrative Rules chapter 333, division 71 and will be doing so in the future. Nonetheless, SICFs are required to comply with 2020 Special Session 1 Oregon Laws, Chapter 20.

This fact sheet is to clarify the expectations of an SICF to comply with 2020 Special Session 1 Oregon Laws, Chapter 20. SICFs should review 2020 Special Session 1 Oregon Laws, Chapter 20 for all applicable requirements.

Summary of requirements of the law – An SICF:

- May not condition the provision of treatment on a patient having a POLST, advance directive, or an order relating to the administration, withholding or withdrawing of life sustaining measures;
- May not communicate to a patient, or person acting on behalf of the patient, before or after admission to the SICF that treatment is conditioned on the patient having a POLST, advance directive or an order relating to the administration, withholding or withdrawing of life sustaining measures;
- Must adopt and implement policies regarding support persons for eligible patients who need assistance to effectively communicate, make health care decisions, understand health care information, or engage in activities of daily living due to a disability consistent with the requirements of 2020 Special Session 1 Oregon Laws, Chapter 20. Eligible patients are those who need assistance to effectively

- communicate, make health care decisions, understand health care information, or engage in activities of daily living due to a disability and are admitted to the SICF;
- Must inform eligible patients upon admission or at the time services are scheduled of their right to designate support persons consistent with the requirements of 2020 Special Session 1 Oregon Laws, Chapter 20;
 - Must allow an eligible patient to designate at least three support persons, and to allow at least one support person to be present at all times with the patient during the patient's stay, if necessary, to facilitate the patient's care as described in 2020 Special Session 1 Oregon Laws, Chapter 20;
 - An eligible patient's designated support person must be present for any discussion when the patient is likely to be asked to elect hospice care, sign an advance directive or sign an order that allows the withholding or withdrawing of life-sustaining procedures or artificially administered nutrition or hydration;
 - Post the hospital's policy relating to eligible patients' right to support persons at entry points to the SICF that are clearly visible to the public and on the SICF's website.

What is the deadline for compliance?

The effective date of the law required an SICF to have a process to allow eligible patients with disabilities to designate support persons, a written policy and public postings in place by August 1, 2020.

Whom are SICFs required to inform of the right to a support person?

The notice requirements apply to eligible patients admitted to an SICF at the time services are scheduled and upon admission who need assistance to effectively communicate with SICF staff, make health care decisions, understand health care information, or engage in activities of daily living due to a disability. This fact sheet refers to these individuals as "eligible patients." Oregon Health Authority recommends that the SICF provide oral and written notice of rights to eligible patients and make the notice available in accessible versions such as large print, audio, braille, alternative languages, etc.

How will an SICF determine which patients must be informed of the right to designate support persons?

The SICF must ensure all eligible patients are informed of the right to designate support persons. SICFs may elect different methods to ensure all eligible patients are notified or may choose to notify any and all individuals admitted to the SICF to fulfill this obligation. If an eligible patient, or a patient's legal representative does not designate a support person(s) and an SICF determines that a patient has a communication barrier or other disability, the SICF may take reasonable steps to further communicate the patient's right to support persons to the patient, patient's family or patient's legal representative.

When is an SICF required to allow the patient to designate support persons?

An SICF must allow an eligible patient to designate at least three support persons and allow at least one support person to be present with the patient, from the time of

admission until the patient is discharged if necessary to facilitate the patient's care, including but not limited to, because the patient:

- (a) Has a cognitive or mental health disability that affects the patient's ability to make medical decisions or understand medical advice;
- (b) Needs assistance with activities of daily living and the hospital staff are unable to provide or are less effective at providing the assistance;
- (c) Is deaf, hard of hearing or has other communication barriers and requires assistance to ensure effective communication with hospital staff; or
- (d) Has behavioral health needs that the support person can address more effectively than the hospital staff.

Is a support person allowed to make health care decisions for a patient?

A support person's role is to help physically assist or emotionally assist the eligible patient to ensure effective communication between the SICF staff and the patient. A support person cannot make health care decisions for the patient based on their status as a support person unless the support person is otherwise lawfully authorized to make health care decisions.

Who must be present for discussions about end-of-life decision making?

A patient shall decide who may be present for these discussions. If an eligible patient has designated a support person(s), the support person must be present for discussions about electing hospice care, signing an advance directive, or an order allowing the withholding or withdrawing of life-sustaining procedures unless the patient requests that the support person not be there.

When should an SICF notify an eligible patient of the right to have a support person present for end-of-life decision making? SICF staff should give reasonable notification when such discussions are routine practice or may be imminent. If a patient cannot communicate his or her needs, Oregon Health Authority recommends that the SICF default to having the support person present to satisfy the requirement.

What, if any, limits are there are on support persons?

In addition to the statutory limits on the number of support persons, an SICF may impose conditions on support persons to ensure the safety of patients, support persons and staff. Conditions must be reasonably related to the safety interests. OHA has interpreted 2020 Special Session 1 Oregon Laws, Chapter 20 to allow SICFs to adopt generally applicable conditions for different SICF patient care units for infection control purposes and to reflect unique safety aspects related to the patient population of the unit and the treatment modalities generally used in that unit. Conditions may also be set for specific patients to reflect individual safety and treatment needs. An SICF may refuse to allow a designated support person to be present if that support person refuses or fails to comply with the conditions set by the SICF, in that situation the SICF could permit a different designated support person to be present.

May an SICF allow support persons to be "present" remotely?

OHA understands that 2020 Special Session 1 Oregon Laws, Chapter 20 is intended to allow at least one support person to be physically present. In addition, the SICF may facilitate virtual presence of support persons when requested. These rules do not supersede or excuse compliance with other state or federal requirements.

Can the OHA enforce provisions of the law without administrative rules?

Yes. The absence of rules does not mean the law does not apply to an SICF. To the extent that law applies to an SICF, the SICF must comply and the OHA may enforce.

What if provisions in OAR chapter 333, division 071 are inconsistent with the requirements of the law?

To the extent that current SICF rules are inconsistent with the requirements of 2020 Special Session 1 Oregon Laws, Chapter 20, the requirements of the law will supersede.

Oregon Health Authority – Contact Information:

Public Health Division, Health Care Regulation & Quality Improvement

Please contact the Oregon Health Authority, Public Health Division for information about hospital compliance requirements at mailbox.hclc@state.or.us or 971-673-0540.