



SB 1606 Webinar Q&A

(1-19-2022)

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Conditions of support persons

Q: Are the support staff permitted to stay if the individual wants them to leave (ex: behavioral individual who is a med seeker)?

The patient is generally the final decision-maker about when a support person should be present. There may be situations in which a patient is unconscious, unable to communicate, or where a court has determined that the patient is not competent to make the decision, but in the absence of those factors the support person is expected to follow the patient's instructions and preferences.

Q: What processes are put in place to avoid abuse of the support person role to keep it from being used only to gain entry?

The support person law has specific criteria for determining which patients need a support person and the rules create an interactive process so that patients, support persons, and hospitals can work together to ensure that patients' needs are clear and that all parties can work together to determine who is best situated to meet those needs. Hospitals have legitimate concerns about potential abuse of the law, but those concerns are also balanced with legitimate concerns of patients with disabilities.

Q: Are there any provisions in the new bill for a patient to receive a support person at the time of discharge, and if so, is there an appeals process?

The support person law covers the time when a patient is admitted to the hospital or in the emergency department. This can include discharge planning. Once the patient is discharged the support person law is not applicable.

Q: If there is a person who can't state who their support person is, can their ISP team or guardian state who their support person is?

It is best practice for all people to put their medical wishes down in writing. This could be establishing a durable power of attorney, picking a health care representative, or completing an advance directive that clearly states their wishes around end of life care. Even if a patient cannot articulate who they want as support people, they can indicate their wishes through nonverbal communication or other supported decision making. For example, if there is a question about the patient's ability to choose, an ISP team member, caseworker, guardian or family member may be helpful in providing information about support preferences that the patient has previously expressed. The support person can also ask for a support care conference.

Denial/support care conference

Q: If a support person is denied entry, what should they do?

If a patient's request to have a support person present is denied or limited, including limits on the total number of support persons allowed to be present during the course of a day, the patient or support person can request a support care conference to discuss this decision with hospital staff.

The support care conference must include discussion of denial and any parameters for permitting a support person to be physically present with the patient including but not limited to any limitations, restrictions, or additional precautions that may be implemented for the safety of the patient, support person, and hospital staff.

The conference should be held ASAP – but not later than 24 hours after admission or prior to a procedure or operation.

Q: How can a patient or support person request a support care conference?

A patient can request a support care conference from any staff member, but patients should be aware that some hospital staff have more familiarity with the law or more time to address support person issues. Hospital team members who are named on the hospital's posting that summarizes the support person policy or members of the hospital's patient advocacy team may be good contacts when requesting a support care conference.

Q: Who can attend the support care conference?

The purpose of the support care conference is for health care providers, patients with disabilities and support persons to discuss why excluding a support person may be necessary for the safety of staff, the patient or the support person or if any conditions can be reasonably imposed to allow for support person presence.

The Support Care conference can be held in person, by phone, or electronic media and includes:

- A representative from the patient's hospital care team
- The patient
- The patient's legal representative (if applicable)
- The patient's designated support person(s)
- An advocate from the OHA COVID Feedback Team (if available)

Q: Who can hospital personnel contact if support persons who are patient's paid staff are denied access to the patient?

A patient's staff member can request a support care conference if they are denied access to the patient. In addition, support persons may have information that reflects support preferences that the patient has previously expressed.

Q: Are temporary disabilities and intubated patients eligible for support persons?

A temporary disability may trigger the hospital's obligation to allow the patient to designate a support person if the patient needs their assistance in communicating. For example, sometimes a patient's temporary illness or the treatment of the illness causes problems with communication, cognition, behavior, or activities of daily living. In these situations the patient may not meet the legal definition of "disability;" however,

under this state law, the hospital must permit a support person to provide effective communication with the care team.

Q: If the patient is a two-person lift can they have two support people?

This specific situation is not addressed in the law but can be discussed in a support care conference. Hospitals are equipped with lifts and have staff to facilitate lifting patients.

Q: If we have someone with special needs how do we get hospital approval for familiar staff or family to be there?

Patients with disabilities and their families are encouraged to contact hospitals in advance of scheduled procedures to discuss support person(s) presence. In addition, support persons can present with the patient at the time of admission.

Q: When bringing people with IDD, do the hospital triage nurse consider their disability into consideration for priority?

The support person law does not address hospital triage practices or priorities except that the hospital may not condition treatment on a patient having a POLST, an advance directive, a form appointing a health care representative, or any instruction relating to the administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition.

Patients should not be treated differently based on the presence of a disability. This is prohibited discrimination under the ADA.

Q: If the support person (mother) is deaf, do they have the rights to have an interpreter? If the deaf support person is denied an interpreter by the doctor, is there a way to file a complaint?

Yes, hospitals are required to provide effective communication to patients and their support persons. If the support person is denied, the patient or the support person should ask for a care conference and the hospital's complaint process to try to resolve the lack of access.

Q: How does the Psychiatric Advance Directive (PAD) authoritative role interface with the three persons allowed to be chosen under this law if these three choices have also been made? Anything in the administrative rule to help sort this out, or even prevent it from occurring in the first place?

A patient's appointed represented designated in a Psychiatric Advance Directive may serve as a patient's support person or may select a support person if the patient is incapable of making healthcare decisions as described in ORS 127.736. The support person law does not specifically reference Psychiatric Advance Directives.

Documentation

Q: Do the support persons need any type of ID/documentation for the hospital?

Support persons are not required to have specific identification or documentation. At a support care conference, it may be helpful for support persons to have documentation related to the patient's disability or describing the assistance the support person usually provides.

Q: What documentation is needed in the ISP when an individual is in Adult Foster Care?

We recommend that you directly ask your agency contact, as this is not addressed in the law.

Q: Is proof of disability required?

No proof of disability is required, but the patient and/or the support person should be able to describe why the patient needs a support person and the specific assistance that a support person can provide. This may be discussed with the care team.

Navigating hospitals

Q: How do you get the hospital to abide by the ruling?

All Oregon hospitals are required to follow the law regarding support persons and the OHA rules implementing the law except the Oregon State Hospital, which is statutorily exempt. A summary of the hospital's policy relating to patients' right to a support person should be posted at the entry points of the hospital and the full policy must be on the hospital's website.

- For information about hospital compliance requirements, you can contact the Oregon Health Authority, Public Health Division at mailbox.hclc@state.or.us or 971-673-0540.
- If you feel that the hospital is not following the rule, you may file a confidential complaint about the facility: www.healthoregon.org/facilitycomplaints. Complaint investigations take place after the patient's hospital stay and the investigators are not able to intervene and order to hospital to take specific actions for specific patients.

Q: How do you communicate your right to hospital security or staff?

The patient or the support person can inform the hospital security or staff that the patient has a disability and needs the assistance of a support person. The patient and/or the support person should be able to describe the patient's eligibility for a support person and the specific assistance that a support person can provide.

When talking with the hospital staff, you may share the Support Persons Fact Sheet, which lays out many of the details about the rule:

<https://www.oregon.gov/SB1606FactSheet.pdf>

Hospitals must ensure that all patients with disabilities are informed of the right to designate support persons. Hospitals may elect different methods to ensure all patients are notified or may choose to notify any and all individuals admitted to the hospital or seeking care in the emergency room to fulfill this obligation. The hospital must document the designated support persons in the medical record.

If you need help communicating your right to the hospital staff you may ask to talk to the hospital's patient rights advocate, you can reach out to the Oregon Health Authority COVID-19 Feedback Team, or you can contact Disability Rights Oregon. A member from the COVID-19 Feedback Team can guide you through the key elements of the rule, or they can communicate directly with the facility staff and be a part of the support care conference, if needed.

- Email the Oregon Health Authority COVID-19 Feedback Team at covid.19@dhsosha.state.or.us
- Call the Oregon Health Authority COVID-19 Feedback Team at 503-945-5488 (Voicemail line available in 11 languages)
- Contact Disability Rights Oregon at 503-243-2081

Q: Who at the hospital will have the greatest understanding of SB 1606 and patient's rights?

The hospital must post a summary of the hospital's policy relating to patients' right to support persons at entry points to the hospital that are clearly visible to the public and include contact information for a person, position or department at the hospital where the policy may be requested in full or an alternate format. The person or department will be able to identify individuals who have an understanding of this law.

You can also ask to talk to the hospital's patient rights advocate.

Q: What if there is not enough staff to stay at the hospital?

You should speak directly with the programs or employers that are managing the paid staff.

Number of support persons

Q: What is the total number of support persons?

Patients or their legal representatives can designate at least three support persons. Hospitals may permit designation of additional support persons, but are not required to do so.

Q: How many support persons can be present at the same time?

Hospitals must allow patients with disabilities to have at least one support person with the patient at all times if necessary to facilitate care. A hospital may have safety conditions such as limiting the number of support persons allowed to be present with

the patient at a time and requiring support persons to wear personal protective equipment (PPE).

Q: How many support persons can be there in a 24-hour period?

The rules do not specify how many support persons can provide care to a patient within a 24-hour period. The hospital may have a limit due to the extra safety screenings for COVID-19. If the hospital's limit would negatively impact the patient's support person's ability to provide assistance, the patient or support person may request a support care conference to discuss options.

Q: Within the ICU, can more than one caregiver support someone at different times?

The support person may be able to provide assistance in the ICU, but there may also be situations in which the patient needs would be met by hospital staff who are trained to provide specialized treatment and care in a low-stimulation environment for healing. In addition, the hospital may impose additional conditions on support persons providing support to reflect the unique safety and treatment needs of patients in the ICU. As with all questions, patients and support persons may request a support care conference to discuss specific needs with hospital staff.

Q: Can the Parent/Guardian be present along with a caregiver if providing support at the same time?

If the patient is a minor, then the parent or guardian would likely be a visitor and subject to visitor limits, which differ from support person protections and responsibilities. Children over the age of 14 can designate their support persons. If the parent or guardian is a designated support person, then there may be restrictions on the number of support persons allowed to be present at the same time.

Q: Can accommodations be made to the 1 visitor per day for individuals with different morning and evening support providers?

Support persons are not visitors, and while hospitals may place reasonable requirements and limitations on support persons, restricting patients to one support person per day may not be reasonable. Patients and support persons can request a support care conference to work with hospital staff on the number of support persons who can be present each day.

Obligations of support person

Q: What are the obligations of a support person?

A support person's role is to help physically assist or emotionally assist the patient or to ensure effective communication between the hospital 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. A support person must be able to fulfill this rule and to comply with reasonable conditions imposed by the hospital.

Q: I have a client who utilizes the ER for attention and requests I stay with her. What are my obligations as a support provider?

This may be best answered by the program that employs you.

Q: Are there protections in rule that prevent hospitals from REQUIRING the support person to perform care?

Hospitals do not require a support person to be present. When a support person has been designated and is present, the support person is expected to provide the assistance that the patient and/or support person indicated the patient needed the support person to provide.

Paid support persons

Q: Do agencies need prior written approval from the CM for the DSP to provide hospital supports?

Refer to paid caregiver section

Q: Do the hospital staff have a right to ask if a support person is a paid or non-paid provider?

Hospital staff may ask whether a support person is paid or unpaid. Whether the support person is paid or unpaid does not determine whether the patient with a disability needs the assistance of a support person.

Q: Can a caregiver with the state of Oregon be a support since they are paid by the state? If the hospital won't let them be a support, what is the next step?

Yes, a caregiver paid by the state may be the support person for a patient with a disability. In this situation the caregiver likely already knows the patient and their needs. If the hospital refuses to permit the caregiver to be present as the patient's support person, the patient or the support person may request a support care conference to describe the patient's eligibility for a support person and the specific assistance that a support person can provide.

Q: Can a support person be paid or unpaid?

Yes. A support person may be paid or unpaid. Whether the support person is paid or unpaid does not determine whether the patient with a disability needs the assistance of a support person.

Paid caregivers – billing

We received several questions from paid caregivers about how they should bill for time they spend as a hospital support person for their clients. Examples of these questions are:

Q: What kind of documentation will be required, if any, in eXPRS?

Q: Do we get paid for time there with client while registration them?

Q: Confirmation on if/how to bill in eXPRS when supporting someone in the hospital?

Q: Information specific to AFC-DD providers payment while supporting individual emitted to hospital.

Q: Can foster providers and PSW care workers continue to be paid while an individual is in the hospital?

Q: Can personal support workers provide assistance and be paid while their client is in hospital?

There are many different state programs that pay caregivers. We recommend that you directly contact your employer or the program you work with to ask questions about billing and payment.

Developmental Disabilities Personal Support Workers (PSWs) or Foster Care Providers with questions about billing or time entry should first contact the CDDP, Brokerage or CIIS program that authorized your services.

Qualification of support persons

Q: What is the definition of a support person?

“Support person” means a family member, guardian, personal care assistant or other paid or unpaid attendant selected by the patient to physically or emotionally assist the patient or ensure effective communication with the patient.

Q: Are there any qualifications needed to be a support person, such as education or certifications?

There are no general qualifications needed to be a support person. However, support persons must be someone who has the ability to physically or emotionally assist the patient or ensure effective communication with the patient. Support persons must follow the hospital’s safety conditions to serve in this role, such as wearing a mask and taking other precautions that may include but not be limited to handwashing and social distancing.

Q: What is the role of a support person?

Support persons help people with disabilities communicate, make health care decisions, understand information, and engage in daily living activities like eating, bathing, and dressing. A support person's role is to help physically assist or emotionally assist the patient to ensure effective communication between the hospital 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. The support person does

not have individual rights in this situation and is present based on the patient's right to have a support person present.

Q: Does the potential need for a support person if/when in the hospital need to be in the assessment?

The support person law covers the time when a patient is admitted to the hospital or in the emergency department. Patients may be assessed in both inpatient and outpatient settings. In these situations, the right to have a support person will depend on whether the patient has been admitted. It may be helpful for patients who are admitted or in the ED to describe the patient's eligibility for a support person and the specific assistance that a support person can provide.

Settings

Q: Does the rule apply to outpatient settings (specialty clinics, doctor's office, palliative care, urgent care)?

This new state law covers admitted patients and patients in the ED. Some patients are admitted in outpatient settings and would be covered by the law. Other outpatient appointments do not require admission and would not be covered by the new state law. It is important to note that the right to receive reasonable accommodations still apply to outpatient settings under the Americans with Disabilities Act. A person can make a request to the physician or staff if they would like accommodations, such as for a support person to attend. Then it is up to the clinic to state why it is an undue burden.

You can read more about seeking reasonable accommodations at Disability Rights Oregon's website at: <https://static1.squarespace.com/Reasonable-Accommodations-in-Hospitals-during-COVID-19>

You can also fill out a disability accommodation form like this one: <https://static1.squarespace.com/COVID19+Disability+Accommodation>

You can find more information about COVID-19 and the American Disabilities Act here: <https://beta.ada.gov/COVID+ADA>

Q: Does this include psych holds in hospitals?

The support person law applies when a patient is admitted to the hospital or in the ED including for behavioral or mental health conditions. Under the new state law, the hospital may implement only reasonable limitations, restrictions or additional precautions for the safety of the patient, support person, and hospital staff. The Oregon State Hospital is specifically excluded from the support person law and is not required to permit support persons to be present.

Time limit of support persons

Q: Can the support person stay overnight?

A support person may stay overnight, if it is necessary to facilitate the patient's care. Visitor hours do not apply to support persons.

Q: Is there a time limit for a support person's stay?

One support person is allowed to be present at all times with the patient, if necessary, to facilitate the patient's care.

Training/advocacy

Q: How can people advocate for SB 1606 in hospitals?

- Share our [Hospital Support Persons flyer](#) so people with disabilities and their support persons know what to do and who to contact if they have concerns.
- Learn more about support persons on this [OHA fact sheet](#).
- Speak with the hospital's patient advocate or ADA coordinator.
- Ask for a patient care conference so that individual needs and rights may be addressed by the clinical team.

Q: How can a support person properly advocate for the patient?

A support person can properly advocate for the patient by ensuring effective communication between the hospital staff and the patient and understanding the patient's rights under the rule. If the patient has been denied a support person or if the support person has been told not to enter the hospital, you can request a support care conference to discuss the situation with hospital staff.

For additional support you can:

Ask to talk to the hospital's patient rights advocate

- Email the Oregon Health Authority COVID-19 Feedback Team at covid.19@dhsosha.state.or.us
- Call the Oregon Health Authority COVID-19 Feedback Team at 503-945-5488 (Voicemail line available in 11 languages)
- Contact Disability Rights Oregon at 503-243-2081
- Contact the Oregon Health Authority, Public Health Division for information about hospital compliance requirements at mailbox.hclc@state.or.us or 971-673-0540.

Q: Is there training and education occurring within each hospital setting?

The hospitals are responsible for disseminating information on SB 1606 with their staff. The Oregon Association of Hospitals & Health Systems and Disability Rights

Oregon has hosted webinars to educate hospital staff on the key elements of the rule. There will be additional trainings and education in the future.

Q: How to best advocate for patients with behavioral health needs including overcoming disability bias in the medical field settings?

The best thing you can do is learn more about your rights and how to enforce them. A good place to start is Disability Rights Oregon's [COVID-19 and Your Right to Medical Treatment](#).

You may also want to work with the hospital's ADA coordinator or the patient advocate.

Finally, you may ask for a care team meeting to address any problematic statements or assumptions made about the patient that undermines the medical care they are receiving.

Q: How best to support someone in the hospital and to stay person centered?

Listen carefully to the patient and let their wishes, preferences, and choices guide the decision making.

Vaccination status

Q: Can the hospital require the support person to be vaccinated?

No, the hospital cannot require the support person to be vaccinated. They can ask them if they are vaccinated, offer a vaccine, and set reasonable precautions to stop the spread of infection.

Other

Q: If an ISP team does not think an individual needs a DSP with them when admitted but the individual still wants one what are the guidelines for provider/case managers response for this situation?

Inform the patient of their right to choose their support person

Q: Does this apply to both Oregon and Washington?

No, SB 1606 only applies to Oregon.

Q: Does SB 1606 have an end date, or is it permanent?

SB 1606 is permanent.

Q: Can hospitals kick patients out or drive them back to their foster home?

Hospitals must follow state and federal guidelines that require that they do not discriminate or deny services based on a patient's protected status (e.g. disability,

race, gender, ethnicity, etc.). There is no legal requirement for hospitals to provide transport.

Q: Can an individual with disabilities be evicted from the ER due to unacceptable behaviors?

Outside the scope of SB 1606

Document accessibility: For individuals with disabilities or individuals who speak a language other than English, OHA can provide information in alternate formats such as translations, large print, or braille. Contact the COVID-19 Communications Unit at 1-971-673-2411, 711 TTY or COVID19.LanguageAccess@dhsoha.state.or.us.