

Testimony of the Office of Protection and Advocacy for Persons with Disabilities
Before
The Joint Committee on Human Services

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Good morning Senator Doyle, Representative Walker and Members of the Committee. Thank you for this opportunity to comment on several of the bills on your agenda today, and thank you for raising them. They both have significance for our Office and the people we serve.

**Raised Bill No. 6418, AN ACT CONCERNING TRANSFER OR DISCHARGE OF
RESIDENTIAL CARE HOME PATENTS**

This bill would do two things: First, it would give a resident of a Residential Care Home fifteen calendar days in which to request a hearing to challenge a decision by the facility to discharge or transfer him or her. Current statute provides only ten calendar days, which include holidays and weekends. Second, the bill would allow non-attorney advocates to represent the resident at such a hearing.

Our awareness of the need for these changes has grown from our involvement on behalf of a number of residents of these facilities over the past several years. Residential Care Homes used to be called Homes for the Aged, or sometimes by the more generic name of "boarding homes". These days, many of the residents are people who have psychiatric disabilities. Residential Care Homes are not like nursing homes or group homes in that they do not provide medical care, social services, supervision or programming. Although they are licensed by the Department of Public Health, requirements and oversight are minimal, and they vary considerably in size and character.

The people who live in Residential Care Homes generally have few personal resources and options. Over the past several years our PAIMI program (Protection and Advocacy for Individuals with Mental Illness) has attempted to reach out to the residents of these homes to inform them about their rights and assist in solving problems they may be having accessing services. As a result, we have lately begun to receive referrals involving pending discharges, usually from a treatment program or professional service provider that operates independently of the residence. The discharge or transfer notice a resident receives informs him or her of their right to request a hearing from the Commissioner of Public Health. However, most residents are initially uncertain about the procedure, and are unaware of potential sources of help or that the facility is supposed to assist them in locating other housing. Many are simply resigned to eventual homelessness. The bottom line is that by the time the matter is referred to our Office or

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some other source of assistance, it is often too late to request a hearing. The current ten day time limit – which includes holidays and weekends – is simply too short to afford a meaningful opportunity to be heard. It should be noted that these discharge hearing provisions do not apply in emergency situations. The law allows for expedited transfers and discharges (and an after-the-fact hearing) “... where failure to effect an immediate transfer or discharge would endanger the health, safety or welfare of the resident or other residents...”.

The second change we are seeking also involves a meaningful opportunity to be heard - more specifically a right to advocacy representation at the DPH administrative hearing. DPH has ruled that only licensed attorneys can represent residents at discharge or transfer hearings. The problem is that there simply are not enough attorneys available to provide representation at this level. Advocates can accompany a resident to one of these hearings, but, unless they have factual information about which to testify, the advocate must sit silently while the resident attempts to put on his or her own case. With budget reductions currently being experienced by legal service and public interest programs, this picture is going to worsen before it gets better. Representation by paralegals and lay advocates is permitted in most administrative forums. I would urge that you assure this same right to residents of Residential Care Homes.

One further note: as currently drafted, the provision for representation by a lay advocate applies only to advocates from our Office. Since we first suggested language for the bill, I have become aware of at least one other advocacy group that also faces the same limitations on the role their lay advocates can play at hearings. We are working with them on some substitute language for Section 1 (b) that would include them. We hope you will consider, and act favorably on it.

Raised Bill No. 854, AN ACT CONCERNING THE OFFICE OF PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES.

This bill clarifies our Office’s obligation to follow the requirements of federal protection and advocacy statutes and regulations with respect to the confidentiality of client information. Our State enabling legislation already requires that we “ensure that all aspects of agency operations conform to federally established protection and advocacy requirements for program independence and authority...”, and then goes on to list a number of specific federal requirements having to do with the agency’s independence and authority. Unfortunately, that listing does not specifically include reference to federal confidentiality requirements, which has led to some misunderstandings. Federal regulations do require that we maintain the confidentiality of client records, although the exact wording varies somewhat between the various federal program statutes and regulations. An explicit reference to this fact would give clearer notice of the existence of those requirements to all parties, and greater assurance to our clients that information they share with us when they call our Office for information and advice cannot be routinely obtained by others. I urge you to support this bill.

Thank you for your attention. If there are any questions, I will try to answer them.