

LEGISLATION COMMITTEE

Monday May 8, 2006 3:00 PM to 4:30 PM

Governor's Commission on Disabilities

John O. Pastore Center (Formerly the Howard Center)

- 41 Cherry Dale Court

Cranston, RI 02920

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Secretary: Bob Cooper

Attendees: Tim Flynn (Vice Chair); Raymond Bandusky;; Sharon Brinkworth; Rosemary C. Carmody; Maureen Strauss; Elaina Goldstein; Liberty Goodwin; Bill Inlow; Kate McCarthy-Barnett, EdD; Arthur M. Plitt; Rev. Gerard O. Sabourin; & Janet Spinelli

Excused: Paul Choquette (Chair); Jeanne Behie; Joseph Corrente; Linda Deschenes; Kenneth Pariseau; & Gwen Reeve

Minutes

3:00 PM Call to Order and acceptance of minutes Tim Flynn, Vice Chair

Discussion: Vice Chair calls the meeting to order at 3:05 PM.

Members and guests introduce themselves

MOTION: To accept the minutes as presented RB/SB passed unanimously

3:05 PM Status of GCD Legislative Package Bob Cooper

The Commission Position: Commission Supports these bills

Passed the Senate or House and transferred to new Committee:

06 S-2269 CIVIL RIGHTS OF PEOPLE WITH DISABILITIES Sponsor: Sen. Polisena House Health, Education, & Welfare Committee

06 S-2604 Sub A as Amended HUMAN SERVICES -- TRAUMATIC BRAIN INJURIES Sponsor: Sen. Blais House Separation of Powers Committee

06 H-7226 CRIMINAL OFFENSES -- ASSAULTS Sponsor: Rep. Naughton Identical to S 2378 Similar to S 2251 & 2185 Senate Health and Human Services Committee

06 H-7672 STATE AFFAIRS AND GOVERNMENT -- OPEN MEETINGS Sponsor: Rep. Kilmartin Identical to S 2779 & S 2979 Senate Judiciary Committee

Total of GCD Bills Commission Supports this bill – Passed and Transferred: 4

Recommend Passage

06 S-2879 STATE AFFAIRS AND GOVERNMENT -- OPEN MEETINGS Sponsor: Sen. Ciccone Identical to S 2779 & H 7672 Senate Calendar vote scheduled for **5/10/2006**

Total of GCD Bills Commission Supports these bills - Recommend Passage: 1

Hearing Continued (still alive)

06 S-2627 DEPARTMENT OF HEALTH Sponsor: Sen. Perry Identical to S 2289, H 7256 & H 7095 Senate Health and Human Services Committee Last Action 3/8/2006
06 H-7081 MOTOR AND OTHER VEHICLES -- STOPPING, STANDING AND PARKING RESTRICTIONS Sponsor: Rep. Naughton Joint Committee on Highway Safety Last Action 3/15/2006
06 H-7256 DEPARTMENT OF HEALTH Sponsor: Rep. Kilmartin Identical to H 7095, S 2627 & S 2289 House Environmental and Natural Resources Last Action 3/28/2006
06 S-2378 CRIMINAL OFFENSES -- ASSAULTS Sponsor: Sen. McCaffrey Identical to H 7226, Similar to H 7228, S 2251 & 2185 Senate Health and Human Services Committee Last Action 3/29/2006
06 S-2840 HOUSING RESOURCES - NEIGHBORHOOD OPPORTUNITIES PROGRAM Sponsor: Sen. Pichardo Identical to H 7262 Senate Finance Committee Last Action 3/30/2006
06 S-7120 Art. 34 INSURANCE - MANDATED BENEFITS Sponsor: Rep. Watson House Finance Committee
06 H-7262 HOUSING RESOURCES - NEIGHBORHOOD OPPORTUNITIES PROGRAM Sponsor: Rep. Fox Identical to S 2840 House Finance Committee Last Action 4/7/2006
06 H-7095 DEPARTMENT OF HEALTH Sponsor: Rep. Kilmartin Identical to S 2627, S 2289 & H 7256 House Health, Education, & Welfare Last Action 4/10/2006

Hearing Continued (Most likely dead)

06 H-7159 HEALTH CARE SERVICES - UTILIZATION REVIEW ACT Sponsor: Rep. Story Identical to S 2209 House Health, Education, & Welfare Committee Last Action 2/15/2006
06 S-2209 HEALTH CARE SERVICES - UTILIZATION REVIEW ACT Sponsor: Sen. Pichardo Identical to H 7159 Senate Health and Human Services Committee Last Action 3/1/2006
06 S-2779 STATE AFFAIRS AND GOVERNMENT -- OPEN MEETINGS Sponsor: Sen. Perry Identical to S 2879 & H 7672 Senate Judiciary Committee Last Action 3/9/2006

Total of GCD Bills Commission Supports these bills - Continued: 11

In Committee (Most likely dead)

06 S-2289 DEPARTMENT OF HEALTH Sponsor: Sen. Ciccone Identical to H 7095, S 2627 & H 7256 Senate Environment and Agriculture Committee Last Action 2/2/2006
06 S-2334 TOWNS AND CITIES -- ZONING ORDINANCES Sponsor: Sen. Levesque Similar to S 2352 Senate Commerce, Housing and Municipal Government Committee Last Action 2/7/2006

Total of GCD Bills Commission Supports these bills – In Committee: 2

Total of GCD Bills Commission Supports these bills - 18

The Commission Position: Commission Supports these bills if amended

Continued

06 H-7629 HUMAN SERVICES Sponsor: Rep. Naughton House Finance Committee Last Action 4/27/2006

Total of GCD Bills Commission Supports this bill if its amended - Continued: 1

In Committee (Most likely dead)

06 S-2134 SCHOOL AND MUNICIPAL PLAYGROUND SAFETY Sponsor: Sen. Blais Senate Finance Committee Last Action 1/24/2006
06 S-2352 TOWNS AND CITIES -- ZONING ORDINANCES Sponsor: Sen. Levesque Similar to S 2334 Senate Commerce, Housing and Municipal Government Committee Last Action 2/7/2006

Total of GCD Bills Commission Supports this bill if its amended - In Committee: 2

Total of GCD Bills Commission Supports this bill if its amended - 3

The Commission Position: Commission Opposes these bills

Continued (Most likely dead)

06 S-2268 PUBLIC RECORDS -- ACCESS Sponsor: Sen. Lenihan Identical to H 6951 & H 6952 Senate Judiciary Committee Last Action 3/9/2006

06 S-2270 PUBLIC RECORDS Sponsor: Sen. Lenihan Identical to H 6952, H 6951, S 2268 Senate

Judiciary Committee Last Action 3/9/2006

06 H-6951 PUBLIC RECORDS -- ACCESS Sponsor: Rep. Dennigan Identical to S 2270 & Similar to H 6952 & S 2270 House Judiciary Committee Last Action 3/21/2006

06 H-6952 PUBLIC RECORDS Sponsor: Rep. Dennigan Identical to S 2268 & Similar to H 6951 & S 2270 House Judiciary Committee Last Action 3/21/2006

06 H-6790 PARKING PRIVILEGES Sponsor: Rep. Lewiss House Health, Education, & Welfare Committee Last Action 3/22/2006

Total of GCD Bills Commission Opposes this bill - Continued: 5

Total of GCD Bills Commission Opposes this bill - 5

The Commission Position: Committee finds this bill Beneficial

Passed the Senate or House and transferred to new Committee:

06 S-2138 Sub B as Amended SEPARATION OF POWERS Sponsor: Sen. Connor Identical to H 6754 Similar to H 7975 House Separation of Powers Committee Last Action 4/12/2006

06 H-7975 SEPARATION OF POWERS Sponsor: Rep. Coderre Similar to S 2138 & H 8754 Senate Government Oversight Committee Last Action 4/27/2006

06 S-2042 Sub A as Amended MOTOR AND OTHER VEHICLES Sponsor: Sen. Cote Identical to H 6826 House Environmental and Natural Resources Last Action 5/27/2006

Total of GCD Bills Committee finds this bill Beneficial – Passed and Transferred: 3

Recommend Passage

06 S-2615 Sub A as Amended LONG-TERM HEALTH CARE Sponsor: Sen. Paiva-Weed Identical to H 7233 Senate Calendar vote scheduled for 5/9/2006

Total of GCD Bills Committee finds this bill Beneficial - Recommend Passage: 1

Scheduled for hearing and/or consideration

06 H-7546 MOTOR AND OTHER VEHICLES -- ADJUDICATION OF TRAFFIC OFFENSES Sponsor: Rep. McNamara House Finance Committee Next Action 5/9/2006

Total of GCD Bills Committee finds this bill Beneficial - Scheduled for hearing and/or consideration: 1

Hearing Continued (still alive)

06 S-2563 PHARMACEUTICAL ASSISTANCE TO THE ELDERLY Sponsor: Sen. Perry Identical to H 7822 Senate Finance Committee Last Action 3/23/2006

06 S-2560 STATE AFFAIRS AND GOVERNMENT Sponsor: Sen. Perry Senate Finance Committee Last Action 3/28/2006

06 S-2568 STATE AFFAIRS AND GOVERNMENT -- PHARMACEUTICAL ASSISTANCE TO THE ELDERLY ACT Sponsor: Sen. Roberts Senate Finance Committee Last Action 3/28/2006

06 S-2707 MENTAL HEALTH, RETARDATION, AND HOSPITALS - DIVISION OF MENTAL HEALTH Sponsor: Sen. Pichardo Senate Finance Committee Last Action 3/28/2006

Hearing Continued (Most likely dead)

06 H-7233 HEALTH AND SAFETY - LONG TERM CARE Sponsor: Rep. Naughton Identical to S 2615 House Health, Education, & Welfare Committee Last Action 3/22/2006

06 S-2379 PUBLIC UTILITIES AND CARRIERS - RHODE ISLAND PUBLIC TRANSIT AUTHORITY Sponsor: Sen. Raptakis Senate Judiciary Committee

06 H-7429 HEALTH AND SAFETY- STEM CELL RESEARCH Sponsor: Rep. Ajello Identical to S 2240 House Health, Education, & Welfare Last Action 4/5/2006

Total of GCD Bills Committee finds this bill Beneficial - Continued: 7

In Committee

06 S-2026 CHILDREN WITH DISABILITIES Sponsor: Sen. Tassoni Senate Finance Committee Last Action 1/10/2006

06 S-2217 INSURANCE -- COVERAGE FOR MENTAL ILLNESS AND SUBSTANCE ABUSE
Sponsor: Sen. Perry Senate Health and Human Services Committee Last Action 1/31/2006

06 S-2240 HEALTH AND SAFETY- STEM CELL RESEARCH Sponsor: Sen. Perry Identical to H
7429 Senate Health and Human Services Committee Last Action 1/31/2006

06 H-7822 PHARMACEUTICAL ASSISTANCE TO THE ELDERLY Sponsor: Rep. Crowley Identical
to S 2563 House Health, Education, & Welfare Committee Last Action 2/28/2006

Total of GCD Bills Committee finds this bill Beneficial - In Committee: 4

Vetoed by Governor

Last Action 4/3/2006 Next Action

06 H-6754 Sub A SEPARATION OF POWERS Sponsor: Rep. Coderre Identical to S 2138 Similar to H
7975 House Desk

Total of GCD Bills Committee finds this bill Beneficial - Vetoed by Governor: 1

Total of GCD Bills Committee finds this bill Beneficial - 17

The Commission Position: Committee finds this bill Beneficial if amended

Continued (still alive)

06 S-2562 STATE AFFAIRS AND GOVERNMENT Sponsor: Sen. Alves Identical to H 6992 Senate
Finance Committee Last Action 3/23/2006

06 H-6992 HUMAN SERVICES Sponsor: Rep. Slater Identical to S 2562 House Finance Committee
Last Action 4/7/2006

Total of GCD Bills Committee finds this bill Beneficial if amended - Continued: 2

Total of GCD Bills Committee finds this bill Beneficial if amended - 2

The Commission Position: Committee finds this bill Harmful unless amended

Continued (most likely dead)

06 H-6826 MOTOR AND OTHER VEHICLES Sponsor: Rep. McCauley Identical to S 2042 House
Environmental and Natural Resources Last Action 3/2/2006

Continued (still alive)

06 H-7507 BRIDLE AND HIKING TRAILS Sponsor: Rep. Ginaitt House Environmental and Natural
Resources Last Action 3/16/2006

06 H-7067 PHARMACEUTICAL ASSISTANCE TO THE ELDERLY Sponsor: Rep. Naughton
Identical to S 2368 House Finance Committee Last Action 4/27/2006

06 S-2368 PHARMACEUTICAL ASSISTANCE TO THE ELDERLY Sponsor: Sen. Felag Identical to H
7067 Senate Finance Committee Last Action 5/4/2006

Total of GCD Bills Committee finds this bill Harmful unless amended - Continued: 4

In Committee

06 S-2754 OPERATORS' AND CHAUFFEURS' LICENSES Sponsor: Sen. Roberts Senate Health and
Human Services Committee Last Action 2/14/2006

Total of GCD Bills Committee finds this bill Harmful unless amended - In Committee: 1

Total of GCD Bills Committee finds this bill Harmful unless amended - 5

The Commission Position: Committee finds this bill Harmful

Continued (Most likely dead)

06 H-7880 MANDATED BENEFITS REVIEW ACT Sponsor: Rep. Menard House Corporations
Committee Last Action 4/5/2006

06 H-7337 EDUCATION -- SCHOOL COMMITTEES AND SUPERINTENDENTS Sponsor: Rep.
Loughlin House Health, Education, & Welfare Committee Last Action 4/12/2006

Total of GCD Bills Committee finds this bill Harmful - Continued: 2

Total of GCD Bills Committee finds this bill Harmful - 2

Bills that have been amended since the Committee took a position:

06 S-2042 Sub A as Amended Title: MOTOR AND OTHER VEHICLES Sponsor: Sen. Cote

This act would define various terms designating different areas that a bicycle may be operated, and would also set forth rules for users of shared use paths to follow while on shared use paths. "Bikeway," "bike path" or "shared use path" means a transportation/recreational facility physically separated from motorized vehicular traffic by an open space or barrier. These facilities may be used by pedestrians, bicyclists, roller bladders, joggers, wheelchair users and other nonmotorized users.

This act would take effect on July 1, 2007.

Committee finds this bill Beneficial, if amended to include (motorized wheelchairs, etc.)

The Substitute as amended makes it clear that motorized wheelchairs may also use bike paths.

SECTION 2. Chapter 31-19 of the General Laws entitled "Operation of Bicycles" is hereby amended by adding thereto the following sections:

31-19-1.1. Definitions. – (a) "Bicycle trail or path" means a bikeway physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right-of-way or within an independent right-of-way. Bicycle trails or paths may also be used by pedestrians, skaters, wheelchair including motorized wheelchair users, joggers and other nonmotorized users.

31-19-1.2. Rules of the road for bikeways. – (a) All users of bikeways, bike paths or shared use paths must:

- (1) Stay to the right;
- (2) Pass only on the left when it is safe to do so;
- (3) Give appropriate warning to other users when passing; and
- (4) Travel at speeds which are safe and appropriate for the conditions at the time and place.

SECTION 3. This act shall take effect on July 1, 2008.

MOTION: To find beneficial as amended 06 S-2042 Sub A as Amended MOTOR AND OTHER VEHICLES BI/KMcCB passed unanimously

06 S-2604 Sub A as Amended Title: HUMAN SERVICES -- TRAUMATIC BRAIN INJURIES

Sponsor: Sen. Blais Introduced on 2/9/2006

This act would change the composition of the permanent advisory commission on traumatic brain injuries. It would also identify the type of expenditures that can be paid by the traumatic brain injury program. This act would take effect upon passage. The Substitute: References to the moneys to fund this program shall be raised by assessing an additional penalty of ten dollars (\$10.00) for all speeding violations set forth in section 31-41.1-4 have been deleted. Also deleted was the 10% cap on the department of human services' administrative costs.

Commission Supported this bill if amended (spelling error – biennial not biannual)

Floor Amendment: Replaced the word "biannual" (occurring twice a year) with the word "biennial" (once every two years) regarding the frequency of electing officers.

FLOOR AMENDMENT
2006 -- S 2604 SUBSTITUTE A

AN ACT RELATING TO HUMAN SERVICES -- TRAUMATIC BRAIN INJURIES

Mr. President:

I hereby move to amend 2006 -- S 2604 SUBSTITUTE A, entitled "AN ACT RELATING TO HUMAN SERVICES -- TRAUMATIC BRAIN INJURIES", as follows:

On page 2, line 4, by deleting the word "biannual" and inserting in place thereof the word "biennial".

Respectfully submitted,

SENATOR BLAIS

The motion to amend prevails upon a roll call vote with 35 Senators voting in the affirmative and 0

MOTION: To support as amended 06 S-2604 Sub A as Amended Title: HUMAN SERVICES -- TRAUMATIC BRAIN INJURIES BI/SB Passed unanimously

06 S-2615 Sub A as Amended Title: LONG-TERM HEALTH CARE

Sponsor: Sen. Paiva-Weed Requested by the Lieutenant Governor), Introduced on 2/9/2006

This act would make changes in the reporting requirements under the long-term health care ombudsperson act. Reports of abuse would be reported to the office of the state long-term care ombudsperson for those incidents involving nursing facilities, assisted living residences, home care and home nursing care providers, veterans' homes and long-term care institutions. This act would take effect upon passage.

Committee found this bill Beneficial

The Substitute as Amended would: limit the scope of the bill to "long term care units at the Eleanor Slater Hospital, including the Zambarano facility", revise the definition of (12) "Health oversight agency" to mean, the department of elderly affairs or a person or entity acting under a grant of authority from or contract with the department of elderly affairs, including the employees or agents of such agency or its contractors or person or entities to whom it has granted authority that is authorized by law to fulfill the duties and responsibilities of the state's long-term care ombudsman in which health information is necessary to oversee the health system and in accordance with the U.S. Health Insurance Portability and Accountability Act (HIPAA) of 1996.

1-1 SECTION 1. Section 42-66.7-3, 42-66.7-5 and 42-66.7-7 of the General Laws in Chapter
1-2 42-66.7 entitled "Long-Term Care Ombudsperson Act of 1995" are hereby amended to read as
1-3 follows:

1-4 **42-66.7-3. Definitions.** -- As used in this chapter:

1-5 (1) An "act" of any facility or government agency includes any failure or refusal to act
1-6 by any facility or government agency.

1-7 (2) "Administrator" means any person who is charged with the general administration or
1-8 supervision of a facility whether or not that person has an ownership interest and whether or not
1-9 that person's functions and duties are shared with one or more other persons.

1-10 (3) "Elderly" means any person sixty (60) years of age or older who is a resident of any
1-11 facility.

1-12 (4) "Facility" means any facility or institution, home care provider or home nursing care
1-13 provider, whether public or private, offering health or health related services for the
1-14 institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision
1-15 by any government agency. "Facilities" include, but are not limited to, nursing homes,
1-16 intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers,
1-17 home care agencies, homes for the aged, veterans' homes, boarding homes, and residential care
1-18 and assisted living residences.

1-19 (5) "Government agency" means any department, division, office, bureau, board,
2-1 commission, authority, non-profit community organization, or any other agency or
2-2 instrumentality created by any municipality or by the state, or to which the state is a party, which
2-3 is responsible for the regulation, inspection, visitation, or supervision of facilities or which
2-4 provides services to residents of facilities.

2-5 (6) "Ombudsperson" means the person or persons designated by the director. That person
2-6 or persons shall have expertise and experience in the fields of social work, long term care, and
2-7 advocacy, and shall be qualified and experienced in communicating with the elderly.

2-8 (7) "Resident" means any person age sixty (60) years of age or older who is receiving
2-9 treatment, care, or housing in any facility in all of its aspects including, but not limited to,
2-10 admission, retention, confinement, period of residence, transfer, discharge, and in any instances
2-11 directly related to that status. Residents include patients and clients. Residents shall also include
2-12 disabled persons under sixty (60) years of age residing in nursing homes, or clients of residential
2-13 and assisted living facilities and home care providers/home nursing care providers- and long-term
2-14 care units at the Eleanor Slater Hospital, including the Zambarano facility.

2-15 (8) "Interfere" means willing and continuous conduct which prevents the ombudsperson
2-16 from performing her or his official duties.

2-17 (9) "Official duties" means work pursuant to the long-term care ombudsperson program
2-18 authorized by the federal Older Americans Act or the long-term care ombudsperson program
2-19 authorized by state law and carried out under the auspices and general direction of the state long-
2-20 term care ombudsperson.

2-21 (10) "Director" means the director of the department of elderly affairs.

2-22 (11) "Person" means any individual, trust, or estate, partnership, limited liability
2-23 corporation, corporation (including associations, joint stock companies, and insurance
2-24 companies), state, or political subdivision or instrumentality of a state.

2-25 (12) "Health oversight agency" means, for the purposes of this chapter, the department of
2-26 elderly affairs or a person or entity acting under a grant of authority from or contract with the
2-27 department of elderly affairs, including the employees or agents of such agency or its contractors
2-28 or person or entities to whom it has granted authority that is authorized by law to fulfill the duties
2-29 and responsibilities of the state's long-term care ombudsman in which health information is
2-30 necessary to oversee the health system and in accordance with the U.S. Health Insurance
2-31 Portability and Accountability Act (HIPAA) of 1996.

2-32 **42-66.7-5. Powers and duties. --** The long term care ombudsperson shall:

2-33 (1) Identify, investigate, and resolve complaints that (a) are made by, or on behalf of,
2-34 residents; and (b) relate to action, inaction, or decisions, that may adversely effect the health,
3-1 safety, welfare, or rights of the residents (including the welfare and rights of the residents with
3-2 respect to the appointment and activities of guardians and representative payees); and health care
3-3 and financial powers of attorney.

3-4 (2) Receive all reports of incidents reportable to the department of health within twenty-
3-5 four (24) hours, or by the next business day of the occurrence, in cases of resident abuse, neglect,
3-6 exploitation, theft, sexual abuse, accidents involving fires, elopement and patient to patient
3-7 abuses;

3-8 (3) Receive all reports of thirty (30) day notices of resident discharge from long-term care
3-9 facilities;

3-10 (4) Provide referral services to assist residents in protecting their health, safety,
3-11 welfare and rights;

3-12 (5) Inform residents of their rights and advocate on their behalf to improve their
3-13 quality of life and live with dignity and respect;

3-14 (6) Formulate policies and procedures to identify, investigate, and resolve
3-15 complaints;

3-16 (7) Make appropriate referrals of investigations to other state agencies, ~~such as the,~~
3-17 including, but not limited to, the department departments of health, human services and the
3-18 department of attorney general;

3-19 (8) Offer assistance and training to public and private organizations on long term care
3-20 of elders and persons with disabilities;

3-21 (9) Represent the interests of residents of facilities before government agencies and
3-22 seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of
3-23 the residents including, but not limited to, rights with respect to the appointment or removal and
3-24 activities of guardians and representative payees; and powers of attorney;

3-25 (10) Review and, if necessary, comment on any existing and proposed laws,
3-26 regulations, and other government policies and actions, that pertain to the rights and well-being of
3-27 residents of facilities.

3-28 **42-66.7-7. Access to records, facility, resident. --** (a) In the course of an investigation,
3-29 the long term care ombudsperson shall:

3-30 (1) Make the necessary inquiries and obtain information as is deemed necessary;

3-31 (2) Have access to facilities and residents; and

3-32 (3) Enter facilities and, after notifying the person in charge, inspect any books, files,
3-33 medical records, or other records that pertain to the resident.

3-34 (b) In the ordinary course of the long term care ombudsperson's duties, the long term
4-1 care ombudsperson shall have access to residents of a facility to:
4-2 (1) Visit, talk with, make personal, social, and other appropriate services available;
4-3 (2) Inform them of their rights and entitlements and corresponding obligations under
4-4 federal and state law by distribution of educational materials, discussion in groups, or discussion
4-5 with individual residents and their families; and
4-6 (3) Engage in other methods of assisting, advising, and representing residents to extend
4-7 to them the full enjoyment of their rights.
4-8 (c) The office of the long-term care ombudsperson is considered a health oversight
4-9 agency.

4-10 SECTION 2. Sections 23-17.8-1 and 23-17.8-2 of the General Laws in Chapter 23-17.8
4-11 entitled "Abuse in Health Care Facilities" are hereby amended to read as follows:

4-12 **23-17.8-1. Definitions.** -- (a) (1) "Abuse" means:

4-13 (i) Any assault as defined in chapter 5 of title 11, including, but not limited to, hitting,
4-14 kicking, pinching, slapping, or the pulling of hair; provided, however, unless it is required as an
4-15 element of the offense charged, it shall not be necessary to prove that the patient or resident was
4-16 injured by the assault;

4-17 (ii) Any assault as defined in chapter 37 of title 11;

4-18 (iii) Any offense under chapter 10 of title 11;

4-19 (iv) Any conduct which harms or is likely to physically harm the patient or resident
4-20 except where the conduct is a part of the care and treatment, and in furtherance of the health and
4-21 safety of the patient or resident; or

4-22 (v) Intentionally engaging in a pattern of harassing conduct which causes or is likely to
4-23 cause emotional or psychological harm to the patient or resident, including but not limited to,
4-24 ridiculing or demeaning a patient or resident, making derogatory remarks to a patient or resident
4-25 or cursing directed towards a patient or resident, or threatening to inflict physical or emotional
4-26 harm on a patient or resident.

4-27 (2) Nothing in this section shall be construed to prohibit the prosecution of any violator
4-28 of this section under any other chapter.

4-29 (b) "Department" means the department of health when the incident occurs in a health
4-30 care facility, and the department of mental health, retardation, and hospitals when the incident
4-31 occurs in a community residence for people who are mentally retarded or persons with
4-32 developmental disabilities.

4-33 (c) "Facility" means any health care facility or community residence for persons who are
4-34 mentally retarded, or persons with developmental disabilities as those terms are defined in this
5-1 section. "Health care facility" means any hospital ~~or nursing~~ or facility which provides long-term
5-2 health care facility required to be licensed under chapter 17 of this title, and any assisted living
5-3 residence required to be licensed under chapter 17.4 of this title, and any community residence
5-4 whether privately or publicly owned. "Community residence" for persons who are mentally
5-5 retarded or persons with developmental disabilities means any residential program licensed by the
5-6 department of mental health, retardation, and hospitals which meets the definition of a
5-7 community residence as defined in section 40.1-24-1(2) and provides services to people who are
5-8 mentally retarded or persons with developmental disabilities.

5-9 (d) "High Managerial Agent" means an officer of a facility, the administrator and
5-10 assistant administrator of the facility, the director and assistant director of nursing services, or any
5-11 other agent in a position of comparable authority with respect to the formulation of the policies of
5-12 the facility or the supervision in a managerial capacity of subordinate employees.

5-13 (e) "Mistreatment" means the inappropriate use of medications, isolation, or use of
5-14 physical or chemical restraints:

5-15 (1) As punishment;

5-16 (2) For staff convenience;

5-17 (3) As a substitute for treatment or care;

5-18 (4) In conflict with a physician's order; or

5-19 (5) In quantities which inhibit effective care or treatment, or which harms or is likely to
5-20 harm the patient or resident.

5-21 (f) "Neglect" means the intentional failure to provide treatment, care, goods, and services
5-22 necessary to maintain the health and safety of the patient or resident, or the intentional failure to
5-23 carry out a plan of treatment or care prescribed by the physician of the patient or resident, or the
5-24 intentional failure to report patient or resident health problems or changes in health problems or
5-25 changes in health conditions to an immediate supervisor or nurse, or the intentional lack of
5-26 attention to the physical needs of a patient or resident including, but not limited to toileting,
5-27 bathing, meals, and safety. No person shall be considered to be neglected for the sole reason that
5-28 he or she relies on or is being furnished treatment in accordance with the tenets and teachings of a
5-29 well-recognized church or denomination by a duly-accredited practitioner of a well-recognized
5-30 church or denomination.

5-31 (g) "Patient" means any person who is admitted to a facility for treatment or care, while
5-32 "resident" means any person who maintains their residence or domicile, on either a temporary or
5-33 permanent basis, in a facility.

5-34 (h) "Person" means any natural person, corporation, partnership, unincorporated
6-1 association, or other business entity.

6-2 (i) "Immediate jeopardy" means a situation in which the nursing facility's alleged
6-3 noncompliance with one or more state or federal requirements or conditions has caused, or is
6-4 likely to cause serious injury, harm, impairment or death to a resident; or shall be defined in
6-5 accordance with 42 CFR 489 or any subsequent applicable federal regulations.

6-6 (j) "Non-immediate jeopardy -- high potential for harm" means a situation in which a
6-7 nursing facility's alleged noncompliance with one or more state or federal requirements or
6-8 conditions may have caused harm that negatively impacts the individual's mental, physical and/or
6-9 psychosocial status; or shall be defined in accordance with 42 CFR 489 or any subsequent
6-10 applicable federal regulations.

6-11 (k) "Non-immediate jeopardy -- medium potential for harm" means a situation in which
6-12 a nursing facility's alleged noncompliance with one or more state or federal requirements or
6-13 conditions has caused or may have caused harm that is of limited consequence and does not
6-14 significantly impair the individual's mental, physical and/or psychosocial status to function; or
6-15 shall be defined in accordance with 42 CFR 489 or any subsequent applicable federal regulations.

6-16 (l) "Non-immediate jeopardy -- low potential for harm" means a situation in which a
6-17 nursing facility's alleged noncompliance with one or more state or federal requirements or
6-18 conditions may have caused mental, physical and/or psychosocial discomfort that does not
6-19 constitute injury or damage; or shall be defined in accordance with 42 CFR 489 or any
6-20 subsequent applicable federal regulations.

6-21 **23-17.8-2. Duty to report.** -- (a) Any physician, medical intern, registered nurse,
6-22 licensed practical nurse, nurse's aide, orderly, certified nursing assistant, medical examiner,
6-23 dentist, optometrist, optician, chiropractor, podiatrist, coroner, police officer, emergency medical
6-24 technician, fire-fighter, speech pathologist, audiologist, social worker, pharmacist, physical or
6-25 occupational therapist, or health officer, or any person, within the scope of their employment at a
6-26 facility or in their professional capacity, who has knowledge of or reasonable cause to believe that
6-27 a patient or resident in a facility has been abused, mistreated, or neglected shall make, within
6-28 twenty-four (24) hours or by the end of the next business day, a telephone report to the director of
6-29 the department of health or his or her designee for those incidents involving health care facilities,
6-30 and in addition to the office of the state long-term care ombudsperson for those incidents
6-31 involving nursing facilities, assisted living residences, home care and home nursing care
6-32 providers, veterans' homes and long-term care units in Eleanor Slater Hospital, or to the director
6-33 of the department of mental health, retardation and hospitals or his or her designee for those
6-34 incidents involving community residences for people who are mentally retarded or persons with
7-1 developmental disabilities. The report shall contain:

7-2 (1) The name, address, telephone number, occupation, and employer's address and the
7-3 phone number of the person reporting;

- 7-4 (2) The name and address of the patient or resident who is believed to be the victim of
 7-5 the abuse, mistreatment, or neglect;
 7-6 (3) The details, observations, and beliefs concerning the incident(s);
 7-7 (4) Any statements regarding the incident made by the patient or resident and to whom
 7-8 they were made;
 7-9 (5) The date, time, and place of the incident;
 7-10 (6) The name of any individual(s) believed to have knowledge of the incident;
 7-11 (7) The name of any individual(s) believed to have been responsible for the incident.
 7-12 (b) In addition to those persons required to report pursuant to this section, any other
 7-13 person may make a report if that person has reasonable cause to believe that a patient or resident
 7-14 of a facility has been abused, mistreated, or neglected.
 7-15 (c) Any person required to make a report pursuant to this section shall be deemed to have
 7-16 complied with these requirements if a report is made to a high managerial agent of the facility in
 7-17 which the alleged incident occurred. Once notified, the high managerial agent shall be required to
 7-18 meet all reporting requirements of this section within the time frames specified by this chapter.
 7-19 (d) Telephone reports made pursuant to subsection (a) shall be followed-up within three
 7-20 (3) business days with a written report.
 7-21 SECTION 3. This act shall take effect upon passage.

MOTION: To find beneficial 06 S-2615 Sub A as Amended Title: LONG-TERM HEALTH CARE BI/LG passed, RB & JS abstained

4:00 PM Review of New Bills

Tim Flynn

Discussion: Members discussed the following bills.

Review requested by Bob Cooper

06 S-2752 as Amended BUSINESS AND PROFESSIONS -- CONFIDENTIALITY OF HEALTH CARE COMMUNICATIONS AND INFORMATION Sponsor: Sen. Gallo & **06 H-7395 Sub A**
 Sponsor: Rep. Schadone

Description: This act would add the group health plans, health plan sponsors, or business associates of such plans to the list of entities to which a third-party administrator, insurer, health maintenance organization, nonprofit hospital and medical service corporation, or service provider can provide health information, in conformity with the Federal Health Insurance Portability and Accountability Act (HIPAA) and would require security procedures.

This act would take effect upon passage.

The Amendment would prohibit the use of any information released by an employer as the basis for any hiring or termination decision or disciplinary action against an employee.

- 1-1 SECTION 1. Section 5-37.3-4 of the General Laws in Chapter 5-37.3 entitled
 1-2 "Confidentiality of Health Care Communications and Information Act" is hereby amended to read
 1-3 as follows:
 1-4 **5-37.3-4. Limitations on and permitted disclosures.** -- (a) (1) Except as provided in
 1-5 subsection (b) of this section or as specifically provided by the law, a patient's confidential health
 1-6 care information shall not be released or transferred without the written consent of the patient or
 1-7 his or her authorized representative, on a consent form meeting the requirements of subsection (d)
 1-8 of this section. A copy of any notice used pursuant to subsection (d) of this section, and of any
 1-9 signed consent shall, upon request, be provided to the patient prior to his or her signing a consent
 1-10 form. Any and all managed care entities and managed care contractors writing policies in the state
 1-11 shall be prohibited from providing any information related to enrollees which is personal in
 1-12 nature and could reasonably lead to identification of an individual and is not essential for the
 1-13 compilation of statistical data related to enrollees, to any international, national, regional, or local
 1-14 medical information data base. This provision shall not restrict or prohibit the transfer of
 1-15 information to the department of health to carry out its statutory duties and responsibilities.
 1-16 (2) Any person who violates the provisions of this section may be liable for actual and

1-17 punitive damages.

1-18 (3) The court may award a reasonable attorney's fee at its discretion to the prevailing
2-1 party in any civil action under this section.

2-2 (4) Any person who knowingly and intentionally violates the provisions of this section
2-3 shall, upon conviction, be fined not more than five thousand (\$5,000) dollars for each violation,
2-4 or imprisoned not more than six (6) months for each violation, or both.

2-5 (5) Any contract or agreement which purports to waive the provisions of this section
2-6 shall be declared null and void as against public policy.

2-7 (b) No consent for release or transfer of confidential health care information shall be
2-8 required in the following situations:

2-9 (1) To a physician, dentist, or other medical personnel who believes, in good faith, that
2-10 the information is necessary for diagnosis or treatment of that individual in a medical or dental
2-11 emergency;

2-12 (2) To medical and dental peer review boards, or the board of medical licensure and
2-13 discipline, or board of examiners in dentistry;

2-14 (3) To qualified personnel for the purpose of conducting scientific research, management
2-15 audits, financial audits, program evaluations, actuarial, insurance underwriting, or similar studies;
2-16 provided, that personnel shall not identify, directly or indirectly, any individual patient in any
2-17 report of that research, audit, or evaluation, or otherwise disclose patient identities in any manner;

2-18 (4) By a health care provider to appropriate law enforcement personnel, or to a person if
2-19 the health care provider believes that person or his or her family is in danger from a patient; or to
2-20 appropriate law enforcement personnel if the patient has or is attempting to obtain narcotic drugs
2-21 from the health care provider illegally; or to appropriate law enforcement personnel or
2-22 appropriate child protective agencies if the patient is a minor child who the health care provider
2-23 believes, after providing health care services to the patient, to have been physically or
2-24 psychologically abused; or to law enforcement personnel in the case of a gunshot wound
2-25 reportable under section 11-47-48;

2-26 (5) Between or among qualified personnel and health care providers within the health
2-27 care system for purposes of coordination of health care services given to the patient and for
2-28 purposes of education and training within the same health care facility; or

2-29 (6) To third party health insurers including to utilization review agents as provided by
2-30 section 23-17.12-9(16), third party administrators licensed pursuant to chapter 20.7 of title 27 and
2-31 other entities that provide operational support to adjudicate health insurance claims or administer
2-32 health benefits;

2-33 (7) To a malpractice insurance carrier or lawyer if the health care provider has reason to
2-34 anticipate a medical liability action; or

3-1 (8) (i) To the health care provider's own lawyer or medical liability insurance carrier if
3-2 the patient whose information is at issue brings a medical liability action against a health care
3-3 provider.

3-4 (ii) Disclosure by a health care provider of a patient's health care information which is
3-5 relevant to a civil action brought by the patient against any person or persons other than that
3-6 health care provider may occur only under the discovery methods provided by the applicable
3-7 rules of civil procedure (federal or state). This disclosure shall not be through ex parte contacts
3-8 and not through informal ex parte contacts with the provider by persons other than the patient or
3-9 his or her legal representative. Nothing in this section shall limit the right of a patient or his or her
3-10 attorney to consult with that patient's own physician and to obtain that patient's own health care
3-11 information;

3-12 (9) To public health authorities in order to carry out their functions as described in this
3-13 title and titles 21 and 23, and rules promulgated under those titles. These functions include, but
3-14 are not restricted to, investigations into the causes of disease, the control of public health hazards,
3-15 enforcement of sanitary laws, investigation of reportable diseases, certification and licensure of
3-16 health professionals and facilities, review of health care such as that required by the federal
3-17 government and other governmental agencies;

3-18 (10) To the state medical examiner in the event of a fatality that comes under his or her
3-19 jurisdiction;

3-20 (11) In relation to information that is directly related to current claim for workers'
3-21 compensation benefits or to any proceeding before the workers' compensation commission or
3-22 before any court proceeding relating to workers' compensation;

3-23 (12) To the attorneys for a health care provider whenever that provider considers that
3-24 release of information to be necessary in order to receive adequate legal representation;

3-25 (13) By a health care provider to appropriate school authorities of disease, health
3-26 screening and/or immunization information required by the school; or when a school age child
3-27 transfers from one school or school district to another school or school district;

3-28 (14) To a law enforcement authority to protect the legal interest of an insurance
3-29 institution, agent, or insurance-support organization in preventing and prosecuting the
3-30 perpetration of fraud upon them;

3-31 (15) To a grand jury or to a court of competent jurisdiction pursuant to a subpoena or
3-32 subpoena duces tecum when that information is required for the investigation or prosecution of
3-33 criminal wrongdoing by a health care provider relating to his or her or its provisions of health
3-34 care services and that information is unavailable from any other source; provided, that any
4-1 information so obtained is not admissible in any criminal proceeding against the patient to whom
4-2 that information pertains;

4-3 (16) To the state board of elections pursuant to a subpoena or subpoena duces tecum
4-4 when that information is required to determine the eligibility of a person to vote by mail ballot
4-5 and/or the legitimacy of a certification by a physician attesting to a voter's illness or disability;

4-6 (17) To certify, pursuant to chapter 20 of title 17, the nature and permanency of a
4-7 person's illness or disability, the date when that person was last examined and that it would be an
4-8 undue hardship for the person to vote at the polls so that the person may obtain a mail ballot;

4-9 (18) To the central cancer registry;

4-10 (19) To the Medicaid fraud control unit of the attorney general's office for the
4-11 investigation or prosecution of criminal or civil wrongdoing by a health care provider relating to
4-12 his or her or its provision of health care services to then Medicaid eligible recipients or patients,
4-13 residents, or former patients or residents of long term residential care facilities; provided, that any
4-14 information obtained shall not be admissible in any criminal proceeding against the patient to
4-15 whom that information pertains;

4-16 (20) To the state department of children, youth, and families pertaining to the disclosure
4-17 of health care records of children in the custody of the department;

4-18 (21) To the foster parent or parents pertaining to the disclosure of health care records of
4-19 children in the custody of the foster parent or parents; provided, that the foster parent or parents
4-20 receive appropriate training and have ongoing availability of supervisory assistance in the use of
4-21 sensitive information that may be the source of distress to these children;

4-22 (22) A hospital may release the fact of a patient's admission and a general description of
4-23 a patient's condition to persons representing themselves as relatives or friends of the patient or as
4-24 a representative of the news media. The access to confidential health care information to persons
4-25 in accredited educational programs under appropriate provider supervision shall not be deemed
4-26 subject to release or transfer of that information under subsection (a) of this section; or

4-27 (23) To the workers' compensation fraud prevention unit for purposes of investigation
4-28 under sections 42-16.1-12 -- 42-16.1-16. The release or transfer of confidential health care
4-29 information under any of the above exceptions is not the basis for any legal liability, civil or
4-30 criminal, nor considered a violation of this chapter; ~~or~~

4-31 (24) To a probate court of competent jurisdiction, petitioner, respondent, and/or their
4-32 attorneys, when the information is contained within a decision-making assessment tool which
4-33 conforms to the provisions of section 33-15-47; or

4-34 (25) By a third-party administrator, insurer, health maintenance organization, nonprofit
5-1 hospital and medical service corporation, or service provider to a group health plan or plan
5-2 sponsor or the business associate of such group health plan or plan sponsor to the extent such

5-3 release or transfer is permitted under the Federal Health Insurance Portability and Accountability
5-4 Act of 1996 and implementing regulations ("HIPAA"); however, any information released
5-5 pursuant to this subsection (25) shall not be used by an employer as the basis for any hiring or
5-6 termination decision or disciplinary action against an employee. For purposes of this subsection,
5-7 the terms "Group health plan", "plan sponsor", and "business associate" have the same meaning
5-8 as those terms have under HIPAA.

5-9 (c) Third parties receiving and retaining a patient's confidential health care information
5-10 must establish ~~at least the following security procedures~~ security procedures at least as protective
5-11 of those set forth below:

5-12 (1) Limit authorized access to personally identifiable confidential health care
5-13 information to persons having a "need to know" that information; additional employees or agents
5-14 may have access to that information which does not contain information from which an individual
5-15 can be identified;

5-16 (2) Identify an individual or individuals who have responsibility for maintaining security
5-17 procedures for confidential health care information;

5-18 (3) Provide a written statement to each employee or agent as to the necessity of
5-19 maintaining the security and confidentiality of confidential health care information, and of the
5-20 penalties provided for in this chapter for the unauthorized release, use, or disclosure of this
5-21 information. The receipt of that statement shall be acknowledged by the employee or agent, who
5-22 signs and returns the statement to his or her employer or principal, who retains the signed
5-23 original. The employee or agent shall be furnished with a copy of the signed statement;

5-24 (4) Take no disciplinary or punitive action against any employee or agent solely for
5-25 bringing evidence of violation of this chapter to the attention of any person.

5-26 (d) Consent forms for the release or transfer of confidential health care information shall
5-27 contain, or in the course of an application or claim for insurance be accompanied by a notice
5-28 containing, the following information in a clear and conspicuous manner:

5-29 (1) A statement of the need for and proposed uses of that information;

5-30 (2) A statement that all information is to be released or clearly indicating the extent of
5-31 the information to be released; and

5-32 (3) A statement that the consent for release or transfer of information may be withdrawn
5-33 at any future time and is subject to revocation, except where an authorization is executed in
5-34 connection with an application for a life or health insurance policy in which case the
6-1 authorization expires two (2) years from the issue date of the insurance policy, and when signed
6-2 in connection with a claim for benefits under any insurance policy the authorization shall be valid
6-3 during the pendency of that claim. Any revocation shall be transmitted in writing.

6-4 (e) Except as specifically provided by law, an individual's confidential health care
6-5 information shall not be given, sold, transferred, or in any way relayed to any other person not
6-6 specified in the consent form or notice meeting the requirements of subsection (d) of this section
6-7 without first obtaining the individual's additional written consent on a form stating the need for
6-8 the proposed new use of this information or the need for its transfer to another person.

6-9 (f) Nothing contained in this chapter shall be construed to limit the permitted disclosure
6-10 of confidential health care information and communications described in subsection (b) of this
6-11 section.

6-12 SECTION 2. This act shall take effect upon passage.

The committee took no position.

06 H-8071 STATE AFFAIRS AND GOVERNMENT – DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES Sponsor: Rep. Costantino

Description: This act would amend the provisions of the general laws relating to the voluntary admission of children for treatment of mental disability.

Section 1 would take effect upon passage, and would be retroactive to April 30, 2006.

Section 2 of this act would take effect on January 1, 2007.

1-1 SECTION 1. Section 40.1-5-6 of the General Laws in Chapter 40.1-5 entitled "Mental
1-2 Health Law" is hereby amended to read as follows:

1-3 **40.1-5-6. Voluntary admission. [Effective until January 1, 2007.]** -- (a) (4) General. -

1-4 Any individual of lawful age may apply for voluntary admission to any facility provided for by
1-5 this law seeking care and treatment for alleged mental disability. The application shall be in
1-6 writing, signed by the applicant in the presence of at least one witness, who shall attest to the
1-7 application by placing his or her name and address thereon. If the applicant has not yet attained
1-8 his or her eighteenth birthday, the application shall be signed by him or her and his or her parent,
1-9 guardian, or next of kin.

1-10 (2) Admission of children. — Any person who is under the age of eighteen (18) and who
1-11 receives medical benefits funded in whole or in part by either the department of children, youth
1-12 and families or by the department of human services may be admitted to any facility provided for
1-13 by this chapter seeking care and treatment for alleged mental disability only after an initial mental
1-14 health crisis intervention is completed by a provider that is licensed by the department of
1-15 children, youth and families for emergency services, has proper credentials and is contracted with
1-16 the RItE Care health plan or the state and said provider, after considering alternative services to
1-17 hospitalization with the child, family and other providers, requests prior authorization for the
1-18 admission from a representative of the child and family's insurance company or utilization review
2-1 organization representing the insurance company. If the inpatient hospital admits a child without
2-2 the crisis intervention and prior authorization from the insurance company or utilization review
2-3 organization, the hospital will be paid a rate equivalent to an Administratively Necessary Day
2-4 (AND) for each day that the insurance company or utilization review organization representing
2-5 the insurance company determines that the child did not meet the inpatient level of care criteria.
2-6 The state shall ensure that this provision is included in all publicly financed contracts and
2-7 agreements for behavioral health services. Activities conducted pursuant to this section shall be
2-8 exempt from the provisions of section 23-17.12, but shall be subject to the provisions of
2-9 subsection (b) of this section.

2-10 (3) The department of human services shall develop regulations for emergency
2-11 admissions, that would allow the admitting hospital to maintain their compliance with the
2-12 provisions of the act, while meeting the need of the child.

2-13 (b) Period of treatment. - If it is determined that the applicant is in need of care and
2-14 treatment for mental disability and no suitable alternatives to admission are available, he or she
2-15 shall be admitted for a period not to exceed thirty (30) days. Successive applications for
2-16 continued voluntary status may be made for successive periods not to exceed ninety (90) days
2-17 each, so long as care and treatment is deemed necessary and documented in accordance with the
2-18 requirements of this chapter, and no suitable alternatives to admission are available.

2-19 (c) Discharge.

2-20 (1) A voluntary patient shall be discharged no later than the end of the business day
2-21 following of his or her presenting a written notice of his or her intent to leave the facility to the
2-22 medical official in charge or the medical official designated by him or her, unless that official or
2-23 another qualified person from the facility files an application for the patient's civil court
2-24 certification pursuant to section 40.1-5-8. The notice shall be on a form prescribed by the director
2-25 and made available to all patients at all times. If a decision to file an application for civil court
2-26 certification is made, the patient concerned and his or her legal guardian(s), if any, shall receive
2-27 immediately, but in no event later than twelve (12) hours from the making of the decision, notice
2-28 of the intention from the official in charge of the facility, or his or her designee, and the patient
2-29 may, in the discretion of the official, be detained for an additional period not to exceed two (2)
2-30 business days, pending the filing and setting down for hearing of the application under section
2-31 40.1-5-8.

2-32 (2) A voluntary patient who gives notice of his or her intention or desire to leave the
2-33 facility may at any time during the period of his or her hospitalization prior to any certification
2-34 pursuant to section 40.1-5-8, following the giving of the notice, submit a written communication
3-1 withdrawing the notice, whereby his or her voluntary status shall be considered to continue

3-2 unchanged until the expiration of thirty (30) or ninety (90) days as provided in subsection (b). In
3-3 the case of an individual under eighteen (18) years of age, the notice or withdrawal of notice may
3-4 be given by either of the persons who made the application for his or her admission, or by a
3-5 person of equal or closer relationship to the patient, who shall, as well, receive notice from the
3-6 official in charge indicating a decision to present an application for civil court certification. The
3-7 official may in his or her discretion refuse to discharge the patient upon notice given by any
3-8 person other than the person who made the application, and in the event of such a refusal the
3-9 person giving notice may apply to a justice of the family court for release of the patient.

3-10 (d) Examination at facility. - The medical official in charge of a facility shall ensure that
3-11 all voluntary patients receive preliminary physical and psychiatric examinations within twenty-
3-12 four (24) hours of admission. Furthermore, a complete psychiatric examination shall be
3-13 conducted to determine whether the person qualifies for care and treatment under the provisions
3-14 of this chapter. The examination shall begin within forty-eight (48) hours of admission and shall
3-15 be concluded as soon as practicable, but in no case shall extend beyond five (5) days. The
3-16 examination shall include an investigation with the prospective patient of (1) what alternatives for
3-17 admission are available and (2) why those alternatives are not suitable. The alternatives for
3-18 admission investigated and reasons for unsuitability, if any, shall be recorded on the patient's
3-19 record. If it is determined that the patient does not belong to the voluntary class in that a suitable
3-20 alternative to admission is available, or is otherwise ineligible for care and treatment, he or she
3-21 shall be discharged.

3-22 (e) Rights of voluntary patients. - A voluntary patient shall be informed in writing of his
3-23 or her status and rights as a voluntary patient immediately upon his or her admission, and again at
3-24 the time of his or her periodic review(s) as provided in section 40.1-5-10, including his or her
3-25 rights pursuant to section 40.1-5-5(f). Blank forms for purposes of indicating an intention or
3-26 desire to leave a facility shall be available at all times and on and in all wards and segments of a
3-27 facility wherein voluntary patients may reside.

3-28 SECTION 2. Section 40.1-5-6 of the General Laws in Chapter 40.1-5 entitled "Mental
3-29 Health Law" is hereby amended to read as follows:

3-30 **40.1-5-6. Voluntary admission. [Effective January 1, 2007.]** -- (a) (1) General. - Any
3-31 individual of lawful age may apply for voluntary admission to any facility provided for by this
3-32 law seeking care and treatment for alleged mental disability. The application shall be in writing,
3-33 signed by the applicant in the presence of at least one witness, who shall attest to the application
3-34 by placing his or her name and address thereon. If the applicant has not yet attained his or her
4-1 eighteenth birthday, the application shall be signed by him or her and his or her parent, guardian,
4-2 or next of kin.

4-3 (2) Admission of children. - Any person who is under the age of eighteen (18) and who
4-4 receives medical benefits funded in whole or in part by either the department of children, youth
4-5 and families or by the department of human services may be admitted to any facility provided for
4-6 by this chapter seeking care and treatment for alleged mental disability only after an initial mental
4-7 health crisis intervention is completed by a provider that is licensed by the department of
4-8 children, youth and families for emergency services, has proper credentials and is contracted with
4-9 the RIte Care health plan or the state and said provider, after considering alternative services to
4-10 hospitalization with the child, family and other providers, requests prior authorization for the
4-11 admission from a representative of the child and family's insurance company or utilization review
4-12 organization representing the insurance company. If the inpatient hospital admits a child without
4-13 the crisis intervention and prior authorization from the insurance company or utilization review
4-14 organization, the hospital will be paid a rate equivalent to an Administratively Necessary Day
4-15 (AND) for each day that the insurance company or utilization review organization representing
4-16 the insurance company determines that the child did not meet the inpatient level of care criteria.
4-17 The state shall ensure that this provision is included in all publicly financed contracts and
4-18 agreements for behavioral health services. Activities conducted pursuant to this section shall be
4-19 exempt from the provisions of section 23-17.12, but shall be subject to the provisions of
4-20 subsection (b) of this section.

4-21 (3) The department of human services shall develop regulations for emergency
4-22 admissions, that would allow the admitting hospital to maintain their compliance with the
4-23 provisions of the act, while meeting the need of the child.

4-24 (b) Period of treatment. - If it is determined that the applicant is in need of care and
4-25 treatment for mental disability and no suitable alternatives to admission are available, he or she
4-26 shall be admitted for a period not to exceed thirty (30) days. Successive applications for
4-27 continued voluntary status may be made for successive periods not to exceed ninety (90) days
4-28 each, so long as care and treatment is deemed necessary and documented in accordance with the
4-29 requirements of this chapter, and no suitable alternatives to admission are available.

4-30 (c) Discharge.

4-31 (1) A voluntary patient shall be discharged no later than the end of the business day
4-32 following of his or her presenting a written notice of his or her intent to leave the facility to the
4-33 medical official in charge or the medical official designated by him or her, unless that official or
4-34 another qualified person from the facility files an application for the patient's civil court
5-1 certification pursuant to section 40.1-5-8. The notice shall be on a form prescribed by the director
5-2 and made available to all patients at all times. If a decision to file an application for civil court
5-3 certification is made, the patient concerned and his or her legal guardian(s), if any, shall receive
5-4 immediately, but in no event later than twelve (12) hours from the making of the decision, notice
5-5 of the intention from the official in charge of the facility, or his or her designee, and the patient
5-6 may, in the discretion of the official, be detained for an additional period not to exceed two (2)
5-7 business days, pending the filing and setting down for hearing of the application under section
5-8 40.1-5-8.

5-9 (2) A voluntary patient who gives notice of his or her intention or desire to leave the
5-10 facility may at any time during the period of his or her hospitalization prior to any certification
5-11 pursuant to section 40.1-5-8, following the giving of the notice, submit a written communication
5-12 withdrawing the notice, whereby his or her voluntary status shall be considered to continue
5-13 unchanged until the expiration of thirty (30) or ninety (90) days as provided in subsection (b). In
5-14 the case of an individual under eighteen (18) years of age, the notice or withdrawal of notice may
5-15 be given by either of the persons who made the application for his or her admission, or by a
5-16 person of equal or closer relationship to the patient, who shall, as well, receive notice from the
5-17 official in charge indicating a decision to present an application for civil court certification. The
5-18 official may in his or her discretion refuse to discharge the patient upon notice given by any
5-19 person other than the person who made the application, and in the event of such a refusal the
5-20 person giving notice may apply to a justice of the family court for release of the patient.

5-21 (d) Examination at facility. - The medical official in charge of a facility shall ensure that
5-22 all voluntary patients receive preliminary physical and psychiatric examinations within twenty-
5-23 four (24) hours of admission. Furthermore, a complete psychiatric examination shall be
5-24 conducted to determine whether the person qualifies for care and treatment under the provisions
5-25 of this chapter. The examination shall begin within forty-eight (48) hours of admission and shall
5-26 be concluded as soon as practicable, but in no case shall extend beyond five (5) days. The
5-27 examination shall include an investigation with the prospective patient of (1) what alternatives for
5-28 admission are available and (2) why those alternatives are not suitable. The alternatives for
5-29 admission investigated and reasons for unsuitability, if any, shall be recorded on the patient's
5-30 record. If it is determined that the patient does not belong to the voluntary class in that a suitable
5-31 alternative to admission is available, or is otherwise ineligible for care and treatment, he or she
5-32 shall be discharged.

5-33 (e) Rights of voluntary patients. - A voluntary patient shall be informed in writing of his
5-34 or her status and rights as a voluntary patient immediately upon his or her admission, and again at
6-1 the time of his or her periodic review(s) as provided in section 40.1-5-10, including his or her
6-2 rights pursuant to section 40.1-5-5(f). Blank forms for purposes of indicating an intention or
6-3 desire to leave a facility shall be available at all times and on and in all wards and segments of a
6-4 facility wherein voluntary patients may reside.

6-5 SECTION 3. Section 1 shall take effect upon passage, and shall be retroactive to April

MOTION: To table until the next meeting 06 H-8071 STATE AFFAIRS AND GOVERNMENT – DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES, BI/EG passed unanimously

Review requested by Judith Drew

06 H-7856 HEALTH AND SAFETY – LICENSING OF REHABILITATION COUNSELORS

Sponsor: Rep. Naughton Recommitted to the House Corporations Committee

Description: This act would provide for the establishment of the Rhode Island Rehabilitation Counselor License Act.

This act would take effect upon passage.

House Journal Page15 Thursday, May 4, 2006

13. 2006-H 7856

BY Naughton

ENTITLED, AN ACT RELATING TO HEALTH AND SAFETY -- LICENSING OF REHABILITATION COUNSELORS

Committee on Corporations recommends passage.

Representative Kennedy moves to recommit seconded by Representative Fox.

Read and recommitted to the committee on Corporations.

1-16 SECTION 1. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS"
1-17 is hereby amended by adding thereto the following chapter:

1-18 **CHAPTER 78**
2-1 **REHABILITATION COUNSELORS**

2-2 **5-78-1. Short title.** – This chapter shall be known and may be cited as the "Rhode Island
2-3 Rehabilitation Counselor License Act."

2-4 **5-78-2. Definitions.** – As used in this chapter:

2-5 (1) "Licensing board" means the state board of rehabilitation counselor examiners for
2-6 licensure of rehabilitation counselors.

2-7 (2) "Practice of rehabilitation counseling" means the professional application of the
2-8 rehabilitation counseling through a systemic process that assists persons who have physical,
2-9 mental, developmental, cognitive and emotional disabilities to achieve their personal, career, and
2-10 independent living goals in the most integrated settings possible. The rehabilitation counseling
2-11 process involves communication, goal-setting and beneficial growth or change through self-
2-12 advocacy, psychological, vocational, social and behavioral interventions. The specific techniques
2-13 and modalities utilized within this rehabilitation counseling process may include, but are not
2-14 limited to:

2-15 (i) assessment and appraisal;

2-16 (ii) diagnosis and treatment planning;

2-17 (iii) career (vocational) counseling;

2-18 (iv) individual and group counseling treatment interventions focused on facilitating
2-19 adjustments to the medical and psychological impact of disability;

2-20 (v) case management, referral, and service coordination;

2-21 (vi) program evaluation and research;

2-22 (vii) interventions to remove environmental, employment, and attitudinal barriers;

2-23 (viii) consultation services among multiple parties and regulatory systems;

2-24 (ix) job analysis, job development, job retention and job placement services, including
2-25 assistance with employment and job accommodations; and

2-26 (x) the provision of consultation about access to rehabilitation technology and its
2-27 application.

2-28 (3) "Continuing education hours" means actual hours earned in continuing education
2-29 courses, seminars and workshops.

2-30 (4) "Department" means the Rhode Island department of health.
2-31 (5) "Director" means the director of the Rhode Island department of health.
2-32 (6) "Division" means the division of professional regulation in the Rhode Island
2-33 department of health.
2-34 (7) "Experience" means the completion of a minimum of one hundred (100) hours of
3-1 supervised practicum and six hundred (600) hours of supervised internship as part of a program in
3-2 rehabilitation counseling at a college or university or the substantial equivalent, in accordance
3-3 with the department's regulations; or the completion of at least seven hundred (700) hours of
3-4 supervised post-graduate clinical experience in rehabilitation counseling satisfactory to the
3-5 department and in accordance with regulations. All experience must consist of providing clinical
3-6 rehabilitation counseling services directly to clients.
3-7 (8) "Supervision" means clinical oversight of the rehabilitation counselor by a person(s)
3-8 holding a degree from a master's or doctoral program, or the substantial equivalent.
3-9 **5-78-3. Title and practice regulation.** – (a) Any individual licensed under this chapter
3-10 may use the title "licensed rehabilitation counselor" and the abbreviation "L.R.C."; provided, that
3-11 the title an abbreviation correspond to the license held pursuant to this chapter.
3-12 (b) No individual shall represent herself or himself as a "licensed rehabilitation
3-13 counselor" or "L.R.C." unless he or she is licensed as a "licensed rehabilitation counselor"
3-14 pursuant to this chapter and unless the title and abbreviation correspond to the license held
3-15 pursuant to this chapter.
3-16 (c) Those currently holding the title "certified rehabilitation counselor" or "CRC", shall
3-17 also assume the title "licensed rehabilitation counselor", or "L.R.C." These licensees are exempt
3-18 from the examination but shall be required to fulfill all other criteria for licensure as defined in
3-19 this chapter.
3-20 (d) No individual shall use "rehabilitation counselor", "licensed rehabilitation counselor",
3-21 "clinical rehabilitation counselor", "psychiatric rehabilitation counselor", or any other designation
3-22 implying qualification to practice clinical rehabilitation counseling unless she or he is licensed as
3-23 a "licensed rehabilitation counselor" pursuant to this chapter.
3-24 (e) Any individual licensed as a "licensed rehabilitation counselor" and under
3-25 supervision, as defined in this chapter, shall be permitted to practice clinical rehabilitation
3-26 counseling, whether in a private practice or in association with a public or private agency or
3-27 institution.
3-28 (f) Any individual licensed as a "licensed rehabilitation counselor" shall be permitted to
3-29 practice clinical rehabilitation counseling autonomously, whether in a private practice or in
3-30 association with a public or private agency or institution.
3-31 (g) No individual shall engage in the practice of clinical rehabilitation counseling unless
3-32 he or she holds an active license as a "licensed rehabilitation counselor."
3-33 (h) Notwithstanding any provisions in sections 5-78-1 through 5-78-14 or any other
3-34 general or public law to the contrary, the office of rehabilitation services, department of human
4-1 services shall be granted a variance to any rehabilitation counselor who has been continuously
4-2 employed at the state agency commencing on or before July 21, 2006.
4-3 (i) Those currently holding the title "certified rehabilitation counselor" or "CRC" shall
4-4 qualify for licensure as a "licensed rehabilitation counselor". These applications must be received
4-5 within one year of the effective date of this chapter. The regular licensing fee of one hundred
4-6 twenty-five dollars (\$125) shall apply.
4-7 **5-78-4. Rehabilitation counselor privilege.** – (a) No licensee under this chapter or an
4-8 employee of a licensee may disclose any information acquired from clients or persons consulting
4-9 with the licensee to render professional services except:
4-10 (1) With the written consent of the person(s) or, in the case of death or disability, of the
4-11 individual's personal representative, or person authorized to sue, or the beneficiary of an
4-12 insurance policy on an individual's life, health, or physical conditions;
4-13 (2) When there is a clear and present danger to the safety of the patient of client or to
4-14 other individuals;

4-15 (3) When a person is a minor under the laws of this state and the information acquired by
4-16 the licensee involves abuse of the minor, the licensee is required to report this pursuant to section
4-17 40-11-3 and may be required to testify fully in an examination, trial, or other proceeding in which
4-18 the commission of this crime is the subject of inquiry;
4-19 (4) When the person licensed or certified under this chapter is a party defendant to a civil,
4-20 criminal, or disciplinary action arising from a complaint filed by the patient or client, in which
4-21 case the waiver shall be limited to that action;
4-22 (5) When the licensee is called upon to testify in court or administrative hearings
4-23 concerning the potential for abuse or neglect in foster and adoptive placements; or
4-24 (6) When the licensee is collaborating or consulting with an administrative superior on
4-25 behalf of the client.
4-26 (b) The provisions of this chapter do not apply to the following individuals:
4-27 (1) Qualified members of other professions or occupations engaging in practices similar
4-28 in nature to clinical rehabilitation counseling; provided, that they are authorized by the laws of
4-29 this state to engage in similar practices, do not represent themselves as a "licensed rehabilitation
4-30 counselor" and do not characterize their practices as clinical rehabilitation counseling;
4-31 (2) Students engaged in doctorate or master's level study in rehabilitation counseling
4-32 accredited by the commission on rehabilitation education (CORE); provided, that the students are
4-33 practicing as part of a supervised course of study and designated by such titles as "rehabilitation
4-34 counseling intern", "rehabilitation counselor trainee", "rehabilitation counseling student" or others
5-1 clearly indication training status; or
5-2 (3) State employees.
5-3 **5-78-5. Agency powers.** – The department shall promulgate rules and regulations that are
5-4 reasonably necessary for the administration of this chapter and to further its purposes. The
5-5 department shall, on recommendation of the board of rehabilitation counselors, issue licenses to
5-6 those qualified under this chapter.
5-7 **5-78-6. Licensing board.** – (a) Within the department there shall be established a board
5-8 of licensing for rehabilitation counselors. The governor shall appoint a licensing board consisting
5-9 of seven (7) members.
5-10 (b) Of the seven (7) licensing board members, four (4) shall be licensed under this
5-11 chapter, except that the members constituting the first licensing board shall be persons eligible for
5-12 licensing; licensing members shall be:
5-13 (i) Three (3) members selected from and representing the general public. At least one
5-14 member shall be a consumer of rehabilitation counseling services, one shall be the chair of the
5-15 state rehabilitation council and one shall be from a minority group as defined by the federal
5-16 government.
5-17 (ii) Four (4) members shall represent the licensed professionals: two (2) shall be certified
5-18 rehabilitation professionals from the vocational rehabilitation program of the office of
5-19 rehabilitation, department of human services, one shall be either a certified independent
5-20 rehabilitation counselor or a qualified rehabilitation counselor (QRC) from the worker's
5-21 compensation list and one shall be certified rehabilitation counselor serving the blind (for
5-22 purposes of initial appointments certified rehabilitation counselors (CRC) represent licensed
5-23 rehabilitation counselors).
5-24 (iii) One licensed member shall be a voting member of the Rhode Island rehabilitation
5-25 association.
5-26 (iv) Two (2) licensed members shall be certified rehabilitation counselors as approved by
5-27 the commission on rehabilitation counselor certification.
5-28 (3) Licensing board members shall serve without compensation.
5-29 (4) Each licensing board member shall take and subscribe to the oath of affirmation
5-30 prescribed by law and shall file this oath in the office of the secretary of state.
5-31 (5) The term of office shall be three (3) years, except that of the members of the first
5-32 licensing board. Two (2) shall be appointed for a term of one year, two (2) for a term of two (2)
5-33 years, three (3) for a term of three (3) years. At least one member representing the general public,

5-34 and one member representing a minority group, as defined by the federal department of
6-1 education, shall be appointed for the initial term of three (3) full years. Successors to these
6-2 licensing board positions shall be appointed for a term of three (3) years each, except that any
6-3 person appointed to fill a vacancy shall be for the unexpired term of office. Upon expiration of
6-4 the term of office, a member shall continue to serve until a successor is appointed and qualified.
6-5 No person shall be appointed for more than two (2) consecutive three (3) year term.

6-6 (6) The governor may remove any member of the licensing board for neglect of duty,
6-7 malfeasance, conviction of a felony or a crime of moral turpitude while in office or for lack of
6-8 attendance/participation in board meetings. No licensing board member shall participate in any
6-9 matter before the licensing board in which pecuniary interest, personal bias, or other similar
6-10 conflicts of interests is established.

6-11 **5-78-7. Powers and duties of the licensing board.** – (a) The organization, meeting, and
6-12 management of the licensing board shall be established by regulations promulgated by the
6-13 department of health.

6-14 (b) In addition to duties set forth in this chapter, the licensing board shall:

6-15 (1) Examine and pass on the qualifications of all applicants for licensure under this
6-16 chapter, and recommend to the director that a license shall be issued to each qualified successful
6-17 applicant, attesting to the applicant's professional qualification to practice as a "licensed
6-18 rehabilitation counselor";

6-19 (2) Recommend that the director adopt rules and regulations that set professional practice
6-20 standards for licensed rehabilitation counselors;

6-21 (3) Recommend modifications or amendments deemed necessary to effectuate its
6-22 purpose;

6-23 (4) Be responsible for making recommendations to the director concerning all
6-24 disciplinary functions carried out regarding all licenses under this chapter; and

6-25 (5) Have any other powers required to carry out the provisions of this chapter.

6-26 **5-78-8. Qualifications of licensed rehabilitation counselors.** -- (a) Any individual
6-27 designing to obtain a license as a licensed rehabilitation counselor shall be currently certified as a
6-28 certified rehabilitation counselor as bestowed by the commission on rehabilitation counselor
6-29 certification, as a prerequisite for submitting the application to the licensing board. To qualify for
6-30 a license the applicant for licensure shall submit to the board written evidence on forms furnished
6-31 by the division of professional regulation verified under oath that the applicant:

6-32 (1) Is of good character; and

6-33 (2) Has received a master's degree or higher in rehabilitation counseling from a college or
6-34 university accredited by the New England Association of Schools and Colleges, or an equivalent
7-1 regional accrediting agency, and which has the approval by a cognizable national or regional
7-2 certifying authority; or has received a degree determined by the department to be the substantial
7-3 equivalent thereof, in accordance with the department's regulations.

7-4 (3) The graduate coursework has included, but has not been limited to, the following
7-5 areas: theories and techniques of counseling, assessment, occupational information, job
7-6 placement, medical aspects of disability, psychological aspects of disability, community
7-7 resources, delivery of rehabilitation services and the completion of a minimum of one hundred
7-8 (100) hours of supervised practicum and one year or six hundred (600) hours of internship in
7-9 rehabilitation counseling supervised by the department within the college or university granting
7-10 the requisite degree or by an accredited postgraduate clinical training program recognized by the
7-11 United States Department of Education, or education and/or experience which is deemed
7-12 equivalent by the board;

7-13 (4) Has completed a minimum of seven hundred (700) hours of supervised direct client
7-14 contact supervised by persons holding a degree from a master's doctoral program, or the
7-15 substantial equivalent in accordance with the department's regulations or the completion of at
7-16 least seven hundred (700) hours of supervised post-master's clinical experience in rehabilitation
7-17 counseling satisfactory to the department and its regulations;

7-18 (5) Has completed a minimum of one hundred (100) hours of post-degree supervised case

7-19 work within a two (2) year period; provided, that the supervision was provided by a person who
7-20 at the time of rendering the supervision was recognized by the board as an approved supervisor;
7-21 and

7-22 (6) Has passed to the satisfaction of the board an examination conducted by it to
7-23 determine the applicant's qualification for licensure as a licensed rehabilitation counselor.

7-24 (b) Other. An applicant having a comparable license, certification, or reciprocity within
7-25 Rhode Island or from another state or territory of the United States that imposes qualifications
7-26 substantially similar to those of this chapter, as determined by the licensing board.

7-27 (c) A candidate shall be held to have qualified for licensure as a licensed rehabilitation
7-28 counselor upon the affirmative vote of at least four (4) members of the board, two (2) of whom
7-29 must be rehabilitation counselors on the board.

7-30 (d) In addition to the qualifications listed in this section, an applicant for licensure titles
7-31 must prove to the licensing board's satisfaction:

7-32 (1) Good moral character that is a continuing requirement for licensure; and

7-33 (2) United States citizenship or status as a legal resident alien; and

7-34 (3) Absence of a sanction from the commission on rehabilitation counselor certification,
8-1 or a sanction from the Rhode Island licensing board for certification of rehabilitation counselors
8-2 sanction for violation of the code of ethics, or other related state board which shall be waived by
8-3 the board upon presentation of satisfactory evidence that the sanction does not impair the ability
8-4 of the person to conduct with safety to the public the practice authorized by this license. The
8-5 applicant shall bear the burden of proving that his or her sanction does not impair his or her
8-6 ability to conduct with safety to the public the practice authorized by this license;

8-7 (4) Absence of conviction of a felony, which shall be waived by the board upon
8-8 presentation of satisfactory evidence that the conviction does not impair the ability of the person
8-9 to conduct with safety to the public the practice authorized by this license. The applicant shall
8-10 bear the burden of proving that his or her conviction does not impair his or her ability to conduct
8-11 with safety to the public the practice authorized by this license.

8-12 (5) That the applicant has not been declared mentally incompetent by any court, and if the
8-13 decree has ever been rendered, that there has been a subsequent court determination that the
8-14 applicant is competent; and

8-15 (6) Freedom from use of any controlled substance or any alcoholic beverages to the
8-16 extent that the use impairs the ability of the person to conduct with safety to the public the
8-17 practice authorized by this license. The applicant shall bear the burden of proving that he or she is
8-18 free from use of any controlled substance or any alcoholic beverages that impair his or her ability
8-19 to conduct with safety to the public the practice authorized by this license.

8-20 **5-78-9. Fees and renewal. --** (a) Any fees collected under the provisions of this chapter
8-21 shall be retained by the director of the Rhode Island department of health, division of professional
8-22 regulation for the purpose of administering the provisions contained in this chapter. The initial fee
8-23 for application for licensure is one hundred twenty-five dollars (\$125). Licenses shall be renewed
8-24 every twenty-four (24) months after initial licensure upon payment of a fee of one hundred
8-25 twenty-five dollars (\$125) and in compliance with any additional requirements that the board
8-26 promulgates. Such requirements for renewal shall include proof of continued CRC certification
8-27 through maintenance of continuous education units at an amount and kind equal to that required
8-28 for certification maintenance by the commission on rehabilitation counselor's certification.

8-29 **5-78-10. Licensed professionals discipline. –** Licensees subject to this chapter shall
8-30 conduct their activities, services, and practice in accordance with this chapter and with any rules
8-31 promulgated pursuant to this chapter. The licensing board may recommend to the director refusal
8-32 to grant a license to, or to suspend, revoke, condition, limit, qualify, or restrict the license of any
8-33 individual who the licensing board or its designee, after a hearing, determines:

8-34 (1) Is incompetent to practice under the provisions of this chapter, or is found to engage
9-1 in the practice of chemical dependency counseling and/or supervision in a manner harmful or
9-2 dangerous to a client or to the public;

9-3 (2) Has obtained or attempted to obtain a license, or renewal, by bribery or fraudulent

9-4 representation;
9-5 (3) Has knowingly made a false statement on a form required by the licensing board;
9-6 (4) Has failed to obtain the continuing education credits necessary for re-licensing;
9-7 (5) Has engaged in sexual relations with a current client, solicited sexual relations with a
9-8 current client, or committed an act of sexual abuse, or sexual misconduct with a current client;
9-9 (6) Has failed to remain free from the use of any controlled substance or any alcoholic
9-10 beverages to the extent that the use impairs the ability of the person to conduct with safety to the
9-11 public the practice authorized by this license. The applicant shall bear the burden of proving that
9-12 he or she is free from use of any controlled substance or any alcoholic beverages that impair his
9-13 or her ability to conduct with safety to the public the practice authorized by this license;
9-14 (7) Has been convicted of a felony, which shall be waived by the board upon presentation
9-15 of satisfactory evidence that the conviction does not impair the ability of the person to conduct
9-16 with safety to the public the practice authorized by this license. The applicant shall bear the
9-17 burden of proving that his or her conviction does not impair his or her ability to conduct with
9-18 safety to the public the practice authorized by this license;
9-19 (8) Has disciplinary action pending or has revocation, suspension, or probation taken
9-20 against the licensee in Rhode Island or another state or territory of the United States;
9-21 (9) Has failed to maintain confidentiality per federal regulations 42 C.F.R. part 2;
9-22 (10) Has engaged in false or misleading advertising;
9-23 (11) Has a mental disability which significantly impairs the ability or judgment (the order
9-24 of a court that the licensee is in need of mental treatment for incompetency shall continue the
9-25 mental disability); and
9-26 (12) Has violated any of the provisions of this chapter, or the provisions of any code of
9-27 ethics adopted by the licensing board.
9-28 **5-78-11. Complaints. --** All complaints concerning a licensee's business or professional
9-29 practice shall be received by either the licensing board or the department of health. Each
9-30 complaint received shall be logged, recording at a minimum the following information:
9-31 (1) Licensee's name;
9-32 (2) Name of the complaining party;
9-33 (3) Date of complaint;
9-34 (4) Brief statement of complaint; and
10-1 (5) Disposition.
10-2 **5-78-12. Disciplinary process. –** (a) Disciplinary procedures under this chapter shall be
10-3 conducted in accordance with the Administrative Procedures Act, chapter 35 of title 42.
10-4 (b) The licensing board or its designee shall hear evidence produced in support of the
10-5 formal charges and contrary evidence produced by the licensee. At the conclusion of the hearing,
10-6 the licensing board shall make recommendations to the director who shall issue an order.
10-7 **5-78-13. Disciplinary sanctions –** (a) The licensing board may recommend that the
10-8 director impose any of the following sanctions, singly or in combination, when it finds that a
10-9 licensee is guilty of any offenses described in this section:
10-10 (1) Revocation of the license;
10-11 (2) Suspension of the license for any period of time;
10-12 (3) Censure of the license;
10-13 (4) Issue a letter or reprimand;
10-14 (5) Place a licensee on probationary status and require the licensee to submit to any of the
10-15 following:
10-16 (i) Report regularly to the licensing board upon matters that are the basis of probation;
10-17 (ii) Continue to renew professional education until a satisfactory degree of skill has been
10-18 attached in those areas that are the basis of probation;
10-19 (6) Refuse to renew a license;
10-20 (7) Revoke probation which was granted and imposed any other discipline provided in
10-21 this section when the requirements of probation are not fulfilled or have been violated.
10-22 (b) The director may reinstate any licensee to good standing under this chapter, if after a

10-23 hearing the department of health is satisfied that the applicant's renewed practice is in the public
 10-24 interest.
 10-25 (c) Upon the suspension or revocation of a license issued under this chapter, a licensee
 10-26 shall be required to surrender the license to the director and upon failure to do so, the director
 10-27 shall have the right to seize the license.
 10-28 (d) The director may make available annually a list of the names and addresses of all
 10-29 licensees under the provisions of this chapter, and of all persons who have been disciplined within
 10-30 the preceding twelve (12) months.
 10-31 (e) Any persons convicted of violating the provisions of this chapter shall be guilty of a
 10-32 misdemeanor, punishable by a fine of not more than five hundred dollars (\$500), imprisonment
 10-33 for not more than one year, or both.
 10-34 **5-78-14. Special provisions.** – (a) Any person practicing the profession to be licensed
 11-1 pursuant to chapter 5-78 shall apply for a license within one year of the effective date of
 11-2 enactment.
 11-3 (1) If such a person does not meet the requirements for a license established within this
 11-4 article, such person may meet alternative criteria determined by the department to be the
 11-5 substantial equivalent of such criteria.
 11-6 (2) If such person does not meet the requirements for a license established within this
 11-7 article, but has been certified or registered by a national certifying or registering body having
 11-8 certification or registration standards acceptable to the department, the department shall license
 11-9 without examination.
 11-10 (3) If such person does not meet the requirements for a license established within this
 11-11 article, the department shall license without examination if the applicant submits evidence
 11-12 satisfactory to the department of having been engaged in the practice of rehabilitation counseling
 11-13 at least five (5) of the immediately preceding eight (8) years.
 11-14 (b) The department shall establish by rules and regulations all fees authorized pursuant to
 11-15 this chapter. Such fees shall be set in amounts sufficient to meet the expenses of administering the
 11-16 provisions of this chapter.
 11-17 (c) The department shall promulgate any rules and regulations necessary to establish
 11-18 professional standards of rehabilitation counselors and any other rules and regulations necessary
 11-19 to administer the provisions of this chapter.
 11-20 **5-78-15. Severability.** -- The provisions of this chapter are severable and if any of its
 11-21 provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of
 11-22 that court shall not affect or impair any of the remaining provisions.
 11-23 SECTION 2. This act shall take effect upon passage.

MOTION: To find beneficial 06 H-7856 HEALTH AND SAFETY – LICENSING OF REHABILITATION COUNSELORS RB/BI passed, JS, EG, LG abstained.

4:00 PM Review of Previously Considered Bills

Tim Flynn

06 S-2250 as Amended SOVEREIGN IMMUNITY Sponsor: Sen. McCaffrey

Description: This act would clarify that a cause of action exists against the state of Rhode Island by state employees and other parties seeking to enforce rights with respect to federal civil rights and fair labor statutes where the United States Congress has indicated its intent that said federal statutes be applicable to the states.

This act would take effect on July 1, 2005 and would apply to causes of action arising on or after that date.

The Floor Amendment changes the effective date to July 1, 2006 and would apply to causes of action arising on or after that date.

1-3 SECTION 1. Title 9 of the General Laws entitled "Courts And Civil Procedure --
 1-4 Procedure Generally" is hereby amended by adding thereto the following chapter:
 1-5 CHAPTER 31.1

SOVEREIGN IMMUNITY

9-31.1-1. Consent to be sued by state employees and other parties under certain federal laws. -- In addition to any waivers of immunity or consents to be sued previously established by statute or judicial interpretation, the state consents to be sued in state or federal court by its employees and any other proper parties seeking to enforce rights or obtain remedies afforded by the following federal statutes and their regulations when the United States Congress has indicated its intent that such statutes be applicable to the states:

(1) Fair labor standards. The Fair Labor Standards Act of 1938, 29 U.S.C. section 201 et seq., including, but not limited to, the Equal Pay Act of 1963, 29 U.S.C. section 206 et seq.;

(2) Discrimination generally. Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e et seq.; the Fair Housing Act of 1968, 42 U.S.C. section 3601 et seq.; and the Civil Rights Acts codified at 42 U.S.C. sections 1981-1988;

(3) Race discrimination. Title VI of the Civil Rights Act of 1964, 42 U.S.C. section 2000d et seq.;

(4) Age discrimination. The Age Discrimination in Employment Act, 29 U.S.C. section 621 et seq.;

(5) Sex discrimination. Title IX of the Education Amendments of 1972, 20 U.S.C. section 1681 et seq.;

(6) Disability discrimination. The Americans with Disabilities Act of 1990, 42 U.S.C. section 12101 et seq.; and the Rehabilitation Act of 1973, 29 U.S.C. section 794 et seq.;

(7) Religious discrimination. The Religious Land Use and Institutionalized Persons Act of 2000;

(8) Family and medical leave. The Family and Medical Leave Act of 1993, 29 U.S.C. section 2612 et seq.;

(9) Whistleblower protection. Protections to state employees from retaliation or discrimination for “whistleblowing” or related activity as provided by: the Clean Air Act, 42 U.S.C. section 7622; the Federal Water Pollution Control Act of 1972, 33 U.S.C. section 1367; the Safe Drinking Water Act, 42 U.S.C. section 300j-9; the Solid Waste Disposal Act, 42 U.S.C. section 6971; and the Toxic Substances Control Act, 15 U.S.C. section 2622;

(10) Armed services personnel. The Uniformed Services Employment and Reemployment Act of 1994, 38 U.S.C. section 4301 et seq.;

(11) Copyright protection. The Copyright Act of 1976 as amended, 17 U.S.C. section 101 et seq.; and

(12) Patent protection. The Patent and Plant Variety Protection Remedy Clarification Act, 35 U.S.C. section 271 et seq.

9-31.1-2. Consent to be sued in federal court by state employees and other parties under certain state laws. -- In addition to any waivers of immunity or consents to be sued previously established by statute or judicial interpretation, the state consents to be sued in federal court by its employees and any other proper parties seeking to enforce rights or obtain remedies afforded by the following state laws when the general assembly has indicated its intent that such laws be applicable to the state:

(1) Discrimination generally. The State Fair Employment Practices Act, R.I.G.L. section 28-5-1 et seq.; the Civil Rights Act of 1990, R.I.G.L. section 42-112-1 et seq.; and R.I.G.L. sections 16-38-1 and 16-38-1.1 relating to age, race and sex discrimination in education;

(2) Sex discrimination. The Wage Discrimination Based on Sex Act, R.I.G.L. section 28-6-17 et seq.;

(3) Disability discrimination. The Civil Rights of People With Disabilities Act, R.I.G.L. section 42-87-1 et seq.;

(4) Religious discrimination. The Religious Freedom Restoration Act, R.I.G.L. section 42-80.1-1 et seq.;

(5) Family and medical leave. The Rhode Island Parental and Family Medical Leave Act, R.I.G.L. section 28-48-1 et seq.;

(6) Whistleblower protection. The Rhode Island Whistleblowers’ Protection Act,

3-6 R.I.G.L. section 28-50-1 et seq.; and
 3-7 (7) Armed services personnel. R.I.G.L. section 30-11-3, relating to protections for
 3-8 national guard members on state active duty.
 3-9 **9-31.1-3. Limitation of damages.** – (a) In any action brought against the State of Rhode
 3-10 Island under the statutes and regulations authorized by section 9-31.1-1, the state shall be subject
 3-11 to all forms of relief available under those statutes and regulations; however, except as provided
 3-12 below, the limitation on damages contained in section 9-31-2 shall apply.
 3-13 (b) The limitation of damages contained in subsection (a) of this section shall not be
 3-14 deemed to apply to amounts awarded for back pay, fringe benefits, interest on back pay or fringe
 3-15 benefits, or front pay in lieu of reinstatement, or to attorneys' fees and costs.
 3-16 (c) This section shall not apply to any claims under federal law for which the United
 3-17 States Congress has validly waived the sovereign immunity of the state.
 3-18 (d) Nothing contained herein shall be construed to waive the sovereign immunity of the
 3-19 state from any award of punitive damages.
 3-20 **9-31.1-4. Trial by jury.** – Nothing in this chapter shall be construed to abridge any
 3-21 party's right to a trial by jury.
 3-22 SECTION 2. This act shall take effect on July 1, 2006 and shall apply to causes of action
 3-23 arising on or after that date.

MOTION: To find beneficial 06 S-2250 as Amended & H 7806 SOVEREIGN IMMUNITY RB/AP passed unanimously

06 H-7189 EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION Sponsor: Rep. Almeida
 Description: This act would delete references in the Rhode Island general laws which exempt the legislative branch of state government from compliance with provisions of equal opportunity and affirmative action.

This act would take effect upon passage.

1-1 SECTION 1. Sections 28-5.1-1, 28-5.1-3 and 28-5.1-3.2 of the General Laws in Chapter
 1-2 28-5.1 entitled "Equal Opportunity and Affirmative Action" are hereby amended to read as
 1-3 follows:

1-4 **28-5.1-1. Declaration of policy -- Annual reports -- Applicability to collective**
 1-5 **bargaining agreements.** -- (a) (1) Equal opportunity and affirmative action toward its
 1-6 achievement is the policy of all units of Rhode Island state government, including all public and
 1-7 quasi-public agencies, commissions, boards and authorities; and in the classified, unclassified,
 1-8 and nonclassified services of state employment. This policy applies in all areas where the state
 1-9 dollar is spent, in employment, public service, grants and financial assistance, and in state
 1-10 licensing and regulation. All policies, programs, and activities of state government are
 1-11 periodically reviewed and revised to assure their fidelity to this policy.

1-12 (2) Each department head makes a report to the governor and the general assembly not
 1-13 later than September 30 of each year on the statistical results of the implementation of this
 1-14 chapter and to the state equal opportunity office; ~~provided, that the mandatory provisions of this~~
 1-15 ~~section do not apply to the legislative branch of state government.~~

1-16 (b) This chapter in no way impair any contract or collective bargaining agreement
 1-17 currently in effect. Any contract or collective bargaining agreements entered into or renewed after
 1-18 July 6, 1994 are subject to the provisions of this chapter.

1-19 **28-5.1-3. Affirmative action.** -- (a) The state equal opportunity office shall assign an
 2-1 equal opportunity officer as a liaison to agencies of state government.

2-2 (b) Each state department or agency, ~~excluding the legislative branch of state~~
 2-3 ~~government,~~ annually prepares an affirmative action plan. These plans shall be prepared in
 2-4 accordance with the criteria and deadlines set forth by the state equal opportunity office. These
 2-5 deadlines provide, without limitation, that affirmative action plans for each fiscal year be
 2-6 submitted to the state equal opportunity office and the house fiscal advisor no later than March
 2-7 31. These plans are submitted to and are subject to review and approval by the state equal

2-8 opportunity office.

2-9 (c) Any affirmative action plan required under this section deemed unsatisfactory by the
2-10 state equal opportunity office shall be withdrawn and amended according to equal opportunity
2-11 office criteria, in order to attain positive measures for compliance. The state equal opportunity
2-12 office shall make every effort by informal conference, conciliation and persuasion to achieve
2-13 compliance with affirmative action requirements.

2-14 (d) The state equal opportunity office shall effect and promote the efficient transaction of
2-15 its business and the timely handling of complaints and other matters before it, and shall make
2-16 recommendations to appropriate state officials for affirmative action steps towards the
2-17 achievement of equal opportunity.

2-18 (e) The state equal opportunity administrator serves as the chief executive officer of the
2-19 state equal opportunity office, and is responsible for monitoring and enforcing all equal
2-20 opportunity laws, programs, and policies within state government.

2-21 (f) No later than July 1 each state department or agency, ~~excluding the legislative branch~~
2-22 ~~of state government~~, shall submit to the state equal opportunity office and the house fiscal advisor
2-23 sufficient data to enable the state equal opportunity office and the house fiscal advisor to
2-24 determine whether the agency achieved the hiring goals contained in its affirmative action plan
2-25 for the previous year. If the hiring goals contained in the previous year's plan were not met, the
2-26 agency also submits with the data a detailed explanation as to why the goals were not achieved.

2-27 (g) Standards for review of affirmative action plans are established by the state equal
2-28 opportunity office, except where superseded by federal law.

2-29 (h) For purposes of this section, "agency" includes, without limitation, all departments,
2-30 public and quasi-public agencies, authorities, boards, and commissions of the state, ~~excluding the~~
2-31 ~~legislative branch of state government~~.

2-32 (i) The state equal opportunity office shall continually review all policies, procedures,
2-33 and practices for tendencies to discriminate and for institutional or systemic barriers for equal
2-34 opportunity, and it shall make recommendations with reference to any tendencies or barriers in its
3-1 annual reports to the governor and the general assembly.

3-2 (j) Relevant provisions of this section also apply to expanding the pool of applicants for
3-3 all positions for which no list exists. The equal opportunity administrator is authorized to develop
3-4 and implement recruitment plans to assure that adequate consideration is given to qualified
3-5 minority applicants in those job categories where a manifest imbalance exists, ~~excluding those job~~
3-6 ~~categories in the legislative branch of state government~~.

3-7 **28-5.1-3.2. Enforcement. --** (a) The state equal opportunity administrator is authorized to
3-8 initiate complaints against any agencies, administrators, or employees of any department or
3-9 division within state government, ~~excluding the legislative branch~~, that willfully fail to comply
3-10 with the requirements of any applicable affirmative action plan or of this chapter or that fail to
3-11 meet the standards of good faith effort, reasonable basis, or reasonable action, as defined in
3-12 guidelines promulgated by the federal Equal Employment Opportunity Commission as set forth in
3-13 29 CFR 1607.

3-14 (b) Whenever the equal employment opportunity administrator initiates a complaint, he
3-15 or she shall issue and serve in the name of the equal employment opportunity office a written
3-16 notice, together with a copy of the complaint, requiring that the agency, administrator, agent, or
3-17 employee respond to the notice and appear at a hearing at a time and place specified in the notice.
3-18 The equal employment opportunity office shall follow its lawfully adopted rules and regulations
3-19 concerning hearings of discrimination complaints.

3-20 (c) The equal employment opportunity office has the power, after hearing, to issue an
3-21 order requiring a respondent to a complaint to cease and desist from any unlawful discriminatory
3-22 practice and/or to take any affirmative action, including, but not limited to, hiring, reinstatement,
3-23 transfer, or upgrading employees, with or without back pay, or dismissal, that may be necessary
3-24 to secure compliance with any applicable affirmative action plan or with state or federal law.

3-25 (d) A final order of the equal employment opportunity office constitutes an "order"
3-26 within the meaning of section 42-35-1(j); is enforceable as such an order; is rendered in

3-27 accordance with section 42-35-12; and is subject to judicial review in accordance with section 42-
3-28 35-15.
3-29 SECTION 2. This act shall take effect upon passage.

MOTION: To find beneficial 06 H-7189 EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION RB/RC passed unanimously

06 H-7228 ASSAULTS

Sponsors: Rep. Naughton & Reps. Dennigan, Faria, Rose, & Lima Requested by the Attorney General

Description: This act would mandate that a person convicted of abuse and neglect of adults with severe impairments be subject to a fine of not more than two thousand dollars (\$2,000), or imprisoned not more than five (5) years, or both, and ordered to make full restitution of any funds obtained as the result of any exploitation which results in the misappropriation of funds.

This act would take effect upon passage.

1-1 SECTION 1. Section 11-5-12 of the General Laws in Chapter 11-5 entitled "Assaults" is
1-2 hereby amended to read as follows:

1-3 **11-5-12. Abuse and neglect of adults with severe impairments.** -- (a) Any person
1-4 primarily responsible for the care of an adult with severe impairments who shall willfully and
1-5 knowingly abuse, neglect or exploit that adult: ~~(1) shall be subject to a fine of not more than three~~
1-6 ~~thousand dollars (\$3,000), or imprisoned not more than one year, or both, and ordered to make~~
1-7 ~~full restitution of any funds as the result of any exploitation which results in the misappropriation~~
1-8 ~~of funds. Every person convicted of or placed on probation for violation of this section or whose~~
1-9 ~~case is filed pursuant to section 12-10-12 where the defendant pleads nolo contendere shall be~~
1-10 ~~ordered by the sentencing judge to attend appropriate professional counseling to address his or~~
1-11 ~~her abusive behavior; and (2) upon a conviction for a second or subsequent violation shall be~~
1-12 ~~subject to a fine of not more than five thousand dollars (\$5,000) two thousand dollars(\$2,000), or~~
1-13 ~~imprisoned not more than three (3) five (5) years, or both, and ordered to make full restitution of~~
1-14 ~~any funds obtained as the result of any exploitation which results in the misappropriation of~~
1-15 ~~funds. Every person convicted of or placed on probation for violation of this section or whose~~
1-16 ~~case is filed pursuant to section 12-10-12 where the defendant pleads nolo contendere shall be~~
1-17 ~~ordered by the sentencing judge to attend appropriate professional counseling to address his or~~
1-18 ~~her abusive behavior.~~

1-19 (b) As used in this section:

2-1 (1) "Abuse" means the subjection of an adult with a severe impairment to willful
2-2 infliction of physical pain, willful deprivation of services necessary to maintain the physical or
2-3 mental health of the person, or unreasonable confinement.

2-4 (2) "Adult with severe impairments" means a person over the age of eighteen (18) who
2-5 has a disability which is attributable to a mental or physical impairment or combination of mental
2-6 and physical impairments and results in substantial functional limitations in three (3) or more of
2-7 the following areas of major life activity: (i) mobility; (ii) self-care; (iii) communication; (iv)
2-8 receptive and/or expressive language; (v) learning; (vi) self-direction; (vii) capacity for
2-9 independent living; or (viii) economic self-sufficiency.

2-10 (3) "Exploitation" means an act or process of taking pecuniary advantage of impaired
2-11 persons by use of undue influence, harassment, duress, deception, false representation, false
2-12 pretenses, or misappropriation of funds.

2-13 (4) "Neglect" means the willful refusal to provide services necessary to maintain the
2-14 physical or mental health of an adult with severe impairments.

2-15 (5) "Person primarily responsible for care" means any person who is for a significant
2-16 period of time the primary caregiver or is primarily responsible for the management of the funds
2-17 of an adult with severe impairments.

2-18 (c) Violations of this section shall be reported to the local police department.

2-19 (d) Any person who fails to report known or suspected abuse or neglect shall be guilty of
2-20 a misdemeanor and upon conviction shall be subject to a fine of not more than five hundred

2-21 dollars (\$500).
 2-22 (e) Nothing in this section shall be interpreted to apply to the discontinuance of life-
 2-23 support systems or life-sustaining treatment for an adult for whom, if the treatment were
 2-24 terminated, death may result.
 2-25 (f) Any person participating in good faith in making a report pursuant to this chapter,
 2-26 excluding any perpetrator or conspirator of the acts, shall have immunity from any civil liability
 2-27 that might otherwise be incurred or imposed.
 2-28 (g) Nothing in this section shall be interpreted to prohibit the use of any medical or
 2-29 psychological treatment procedure designed and conducted in accordance with applicable
 2-30 professional standards when performed by appropriately trained personnel under the supervision
 2-31 of a person or facility licensed or approved by the state of Rhode Island and when any consent as
 2-32 is required by law has been obtained.
 2-33 (h) Nothing in this chapter shall be construed to mean a person is abused or neglected for
 2-34 the sole reason that the person is being furnished or relies upon treatment by spiritual means
 3-1 through prayer alone in accordance with the tenets and practices of a church or religious
 3-2 denomination recognized by the laws of this state.
 3-3 SECTION 2. This act shall take effect upon passage.

MOTION: To find harmful unless amended to include the protective service and reinstate the counseling for the abuser 06 H-7228 & S 2185 ASSAULTS BI/LG passed unanimously

06 S-3081 FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCE ACT Sponsor: Sen. Perry & **06 H-7741** Sponsor: Rep. Savage
 Description: This act would allow more than one hundred (100) dosage units of controlled substances for schedules IV to be dispensed if a physician by prescription provides a three (3) month supply.
 This act would take effect upon passage.

1-1 SECTION 1. Section 21-28-3.18 of the General Laws in Chapter 21-28 entitled "Uniform
 1-2 Controlled Substances Act" is hereby amended to read as follows:
 1-3 ARTICLE III
 1-4 REGULATION OF MANUFACTURING, DISTRIBUTING, PRESCRIBING,
 1-5 ADMINISTERING, AND DISPENSING CONTROLLED SUBSTANCES
 1-6 **21-28-3.18. Prescriptions.** -- (a) An apothecary in good faith may sell and dispense
 1-7 controlled substances in schedule II to any person upon a written prescription by a practitioner
 1-8 licensed by law to prescribe or administer those substances, dated and signed by the person
 1-9 prescribing on the day when issued and bearing the full name and address of the patient to whom,
 1-10 or of the owner of the animal for which the substance is dispensed and the full name, address and
 1-11 registration number under the federal law of the person prescribing, if he or she is required by that
 1-12 law to be registered. If the prescription is for an animal, it shall state the species of the animal for
 1-13 which the substance is prescribed.
 1-14 (b) The apothecary filling the prescription shall sign his or her full name and shall write
 1-15 the date of filling on the face of the prescription.
 1-16 (c) The prescription shall be retained on file by the proprietor of the pharmacy in which
 1-17 it was filled for a period of two (2) years so as to be readily accessible for inspection by any
 1-18 public officer or employee engaged in the enforcement of this chapter.
 1-19 (d) (1) Prescriptions for controlled substances in schedule II shall be filed separately and
 2-1 shall not be refilled. The form of record for prescription slips for controlled substances in
 2-2 schedule II shall consist of two (2) parts, an original and a duplicate which are required to be
 2-3 presented to the pharmacy by the ultimate user or his or her representative. Pharmacies
 2-4 dispensing controlled substances in schedule II are required to deliver to the director of health all
 2-5 duplicate copies of the prescriptions on or before the fifth day of the month following the date of
 2-6 dispensing. The prescription slip shall be a form provided by the director of health.
 2-7 (2) The director of health may, after appropriate notice and hearing pursuant to section

2-8 42-35-3, promulgate rules and regulations for the purpose of adopting a system for electronic data
2-9 transmission of prescriptions for controlled substances in schedule II and III, and needles and
2-10 syringes. This system, when operational, shall negate the necessity to utilize the two-part
2-11 prescription described in subdivision (1) of this subsection.

2-12 (e) A prescription for a schedule II narcotic substance to be compounded for the direct
2-13 administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal
2-14 infusion may be transmitted by the practitioner or practitioner's agent to the pharmacy by
2-15 facsimile. The facsimile will serve as the original prescription.

2-16 (f) A prescription written for a schedule II substance for a resident of a long term care
2-17 facility may be transmitted by the practitioner or the practitioner's agent to the dispensing
2-18 pharmacy by facsimile. The facsimile serves as the original prescription.

2-19 (g) A prescription for a schedule II narcotic substance for a patient residing in a hospice
2-20 certified by Medicare under title XVIII of the Social Security Act, 42 U.S.C. section 1395 et seq.,
2-21 or licensed by the state, may be transmitted by the practitioner or practitioner's agent to the
2-22 dispensing pharmacy by facsimile. The practitioner or the practitioner's agent will note on the
2-23 prescription that the patient is a hospice patient. The facsimile serves as the original written
2-24 prescription.

2-25 (h) An apothecary, in lieu of a written prescription, may sell and dispense controlled
2-26 substances in schedules III, IV, and V to any person upon an oral prescription of a practitioner. In
2-27 issuing an oral prescription the prescriber shall furnish the apothecary with the same information
2-28 as is required by subsection (a) of this section in the case of a written prescription for controlled
2-29 substances in schedule II, except for the written signature of the person prescribing, and the
2-30 apothecary who fills the prescription, shall immediately reduce the oral prescription to writing
2-31 and shall inscribe the information on the written record of the prescription made. This record shall
2-32 be filed and preserved by the proprietor of the pharmacy in which it is filled in accordance with
2-33 the provisions of subsection (c) of this section. In no case may a prescription for a controlled
2-34 substance listed in schedules III, IV, or V be filled or refilled more than six (6) months after the
3-1 date on which the prescription was issued and no prescription shall be authorized to be refilled
3-2 more than five (5) times. Each refilling shall be entered on the face or back of the prescription
3-3 and note the date and amount of controlled substance dispensed, and the initials or identity of the
3-4 dispensing apothecary.

3-5 (i) In the case of an emergency situation as defined in federal law, an apothecary may
3-6 dispense a controlled substance listed in schedule II upon receiving an oral authorization of a
3-7 prescribing practitioner provided that:

3-8 (1) The quantity prescribed and dispensed is limited to the amount adequate to treat the
3-9 patient during the emergency period and dispensing beyond the emergency period must be
3-10 pursuant to a written prescription signed by the prescribing practitioner.

3-11 (2) The prescription shall be immediately reduced to writing and shall contain all the
3-12 information required in subsection (a) of this section.

3-13 (3) The prescription must be dispensed in good faith in the normal course of professional
3-14 practice.

3-15 (4) Within seven (7) days after authorizing an emergency oral prescription, the
3-16 prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to
3-17 be delivered to the dispensing apothecary. The prescription shall have written on its face
3-18 "Authorization for emergency dispensing" and the date of the oral order. The written prescription
3-19 upon receipt by the apothecary shall be attached to the oral emergency prescription which had
3-20 earlier been reduced to writing.

3-21 (j) (1) The partial filling of a prescription for a controlled substance listed in schedule II
3-22 is permissible, if the apothecary is unable to supply the full quantity called for in a written
3-23 prescription or emergency oral prescription and he or she makes a notation of the quantity
3-24 supplied on the face of the written prescription or oral emergency prescription which has been
3-25 reduced to writing. The remaining portion of the prescription may be filled within seventy-two
3-26 (72) hours of the first partial filling, however, if the remaining portion is not, or cannot be filled

3-27 within seventy-two (72) hours, the apothecary shall notify the prescribing practitioner. No further
3-28 quantity may be supplied beyond seventy-two (72) hours without a new prescription.

3-29 (2) (i) A prescription for a schedule II controlled substance written for a patient in a long
3-30 term care facility (LTCF), or for a patient with a medical diagnosis documenting a terminal
3-31 illness, may be filled in partial quantities to include individual dosage units. If there is a question
3-32 whether a patient may be classified as having a terminal illness, the pharmacist must contact the
3-33 practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing
3-34 practitioner have a corresponding responsibility to assure that the controlled substance is for a
4-1 terminally ill patient.

4-2 (ii) The pharmacist must record on the prescription whether the patient is "terminally ill"
4-3 or an "LTCF patient." A prescription that is partially filled, and does not contain the notation
4-4 "terminally ill" or "LTCF patient", shall be deemed to have been filled in violation of this chapter.

4-5 (iii) For each partial filling, the dispensing pharmacist shall record on the back of the
4-6 prescription (or on another appropriate record, uniformly maintained, and readily retrievable),
4-7 the:

4-8 (A) Date of the partial filling;

4-9 (B) Quantity dispensed;

4-10 (C) Remaining quantity authorized to be dispensed; and

4-11 (D) Identification of the dispensing pharmacist.

4-12 (iv) The total quantity of schedule II controlled substances dispensed in all partial fillings
4-13 must not exceed the total quantity prescribed.

4-14 (v) Schedule II prescriptions for patients in a LTCF, or patients with a medical diagnosis
4-15 documenting a terminal illness, are valid for a period not to exceed sixty (60) days from the issue
4-16 date, unless sooner terminated by the discontinuance of medication.

4-17 (k) Automated data processing systems. - As an alternative to the prescription record
4-18 keeping provision of subsection (h) of this section, an automated data processing system may be
4-19 employed for the record keeping system, if the following conditions have been met:

4-20 (1) The system shall have the capability of producing sight-readable documents of all
4-21 original and refilled prescription information. The term "sight-readable" means that an authorized
4-22 agent shall be able to examine the record and read the information. During the course of an on-
4-23 site inspection, the record may be read from the CRT, microfiche, microfilm, printout, or other
4-24 method acceptable to the director. In the case of administrative proceedings, records must be
4-25 provided in a paper printout form.

4-26 (2) The information shall include, but not be limited to, the prescription requirements
4-27 and records of dispensing as indicated in subsection (h) of this section.

4-28 (3) The individual pharmacist responsible for completeness and accuracy of the entries
4-29 to the system must provide documentation of the fact that prescription information entered into
4-30 the computer is correct. In documenting this information, the pharmacy shall have the option to
4-31 either:

4-32 (i) Maintain a bound log book, or separate file, in which each individual pharmacist
4-33 involved in the dispensing shall sign a statement each day, attesting to the fact that the
4-34 prescription information entered into the computer that day has been reviewed and is correct as
5-1 shown. The book or file must be maintained at the pharmacy employing that system for a period
5-2 of at least two (2) years after the date of last dispensing; or

5-3 (ii) Provide a printout of each day's prescription information. That printout shall be
5-4 verified, dated, and signed by the individual pharmacist verifying that the information indicated is
5-5 correct. The printout must be maintained at least two (2) years from the date of last dispensing.

5-6 (4) An auxiliary record keeping system shall be established for the documentation of
5-7 refills, if the automated data processing system is inoperative for any reason. The auxiliary
5-8 system shall ensure that all refills are authorized by the original prescription, and that the
5-9 maximum number of refills is not exceeded. When this automated data processing system is
5-10 restored to operation, the information regarding prescriptions filled and refilled during the
5-11 inoperative period, shall be entered into the automated data processing system within ninety-six

5-12 (96) hours.

5-13 (5) Any pharmacy using an automated data processing system must comply with all

5-14 applicable state and federal laws and regulations.

5-15 (6) A pharmacy shall make arrangements with the supplier of data processing services or

5-16 materials to ensure that the pharmacy continues to have adequate and complete prescription and

5-17 dispensing records if the relationship with the supplier terminates for any reason. A pharmacy

5-18 shall ensure continuity in the maintenance of records.

5-19 (7) The automated data processing system shall contain adequate safeguards for security

5-20 of the records, to maintain the confidentiality and accuracy of the prescription information.

5-21 Safeguards against unauthorized changes in data after the information has been entered and

5-22 verified by the registered pharmacist shall be provided by the system.

5-23 (l) Prescriptions for controlled substances as found in schedules II, except those listed in

5-24 subsection (n) of this section, III and IV of section 21-28-2.08 will become void unless dispensed

5-25 within thirty (30) days of the original date of the prescription. The prescriptions in schedules III,

5-26 IV, and V cannot be written for more than one hundred (100) dosage units and not more than one

5-27 hundred (100) dosage units may be dispensed at one time, unless a duly licensed physician shall,

5-28 by prescription, increase the dosage units for schedules IV to provide a patient with a three (3)

5-29 month supply. For purposes of this section, a "dosage unit" shall be defined as a single capsule,

5-30 tablet or suppository, or not more than one teaspoon of an oral liquid.

5-31 (m) Prescriptions for controlled substances as found in schedule II, except those listed in

5-32 subsection (n) below, may be written for up to a thirty (30) day supply, with a maximum of two

5-33 hundred and fifty (250) dosage units, as determined by the prescriber's directions for use of the

5-34 medication. In no event shall more than a thirty (30) days' supply, up to a maximum of two

6-1 hundred and fifty (250) dosage units, be dispensed at one time.

6-2 (n) Prescriptions written for amphetamine sulfate, dextro amphetamine sulfate,

6-3 methamphetamine hydrochloride, methylphenidate and amphetamine mixtures, may be written

6-4 for up to a sixty (60) day supply with a maximum of two hundred fifty (250) dosage units, as

6-5 determined by the prescriber's directions for use of the medication. In no event shall more than a

6-6 sixty (60) day supply, up to a maximum of two hundred fifty (250) dosage units, be dispensed at

6-7 one time.

6-8 SECTION 2. This act shall take effect upon passage.

The committee took no position

4:25 PM Other Business

Is there a need for the Omsted Study Taskforce? – place the bill on next month’s agenda.

Adjourned at:	4:38 PM
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