



Governor's Commission on Disabilities Legislation Committee

Monday June 11, 2012 3-4:00 PM

John O. Pastore Center, 41 Cherry Dale Court,
Cranston, RI 02920-3049

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 <p>meeting graphic</p>	<p>Attendees: Sharon Brinkworth; Regina Connor; Joseph Cirillo; Heather Daglieri; <i>Sarah Everhart Skeels; Timothy Flynn; Roger Harris; Elaina Goldstein; Kate McCarthy-Barnett;</i> Arthur M. Plitt; Meredith Sheehan; Msgr. Gerard O. Sabourin; Angelina Stabile;</p> <p>Absentees: Linda Ward (Chair.); William R. Inlow (Vice Chair.); Rosemary C. Carmody; Julie DeRosa; Linda Deschenes; Kathleen Heren; Paula Parker; & Dawn Wardyga</p>
<p>Staff:</p>	<p>Bob Cooper</p>

	Agenda Topics	Moderator/Leader	Time
 <p>Clock graphic</p>	<p>Call to Order and Acceptance of the Minutes</p> <p>The Executive Secretary called the meeting to order at 3:05PM, in the absence of the Chair and Vice Chair</p>	<p>Linda Ward, Chairperson</p>	<p>3:00</p>
 <p>voting check off graphic</p>	<p>MOTION: To accept the minutes of the previous meeting as presented RC/AS passed unanimously</p>		

 <p>law graphic</p>	<p>Status of the Commission's Legislative Package & Bills - Veto Recommendations</p> <p>Purpose/Goal: To review bills previously found harmful and recommend to the Executive Committee which ones to request the Governor veto (if they are passed in concurrence).</p>	<p>Bob Cooper</p>	<p>3:05</p>
<p style="text-align: center;">Status of the Commission's Original 2012 Legislative Package</p> <ol style="list-style-type: none"> 1. Crisis Intervention Services for abuse non-elderly adults (18-64) with severe impairments. H 7839 Rep. Naughton Sub A as amended [06/05/2012 House passed] & S 2730 Sub A Sen. McCaffrey [Placed on House Calendar 06/11/2012] 2. Transportation to Employment, job training, education, health care, etc. <ol style="list-style-type: none"> a. Maintain the existing RIPTA/RIde service areas; b. Adequate funding/new & stable funding source; c. Expand the RIPTA/RIde service areas/hours beyond the existing service/hours - H 7581 Rep. O'Grady [05/09/2012 Committee heard and continued] 3. Global Medicaid Consumer Choice Waiver; making sure the 2008 level of services stay in place for persons with severe disabilities: <ol style="list-style-type: none"> a. Restore the 2008 Katie Beckett and children with autism spectrum disorders eligibility rules; b. Restore the right to medically necessary brand name drugs without requiring two generic failures before allowing brand name drugs - H 7650 Rep. Corvese [03/14/2012 Committee recommended measure be held for further study] c. Improve services for adults with autism spectrum disorders; d. Retain multiple behavioral healthcare service delivery models; and e. Restore developmental disability service funding. 			

	Agenda Topics	Moderator/Leader	Time
	<p>4. Housing Supports and other services for people with behavioral health concerns:</p> <ul style="list-style-type: none"> a. Restore the Neighborhood Opportunities Program funding [<u>\$25 million Affordable Housing Bond Referendum on Nov. Ballot</u>] and b. Create a supportive housing program H 7237 Rep. Ucci [05/09/2012 Committee heard and continued], H 7265 Rep. Slater [05/01/2012 Committee heard and continued], S 2203 Sen. Tassoni [04/11/2012 Committee heard and continued]; c. Restore Assistive housing SSI funding.- [<u>Budget Act Restored Funding</u>] <p>5. Transition from Youth services (education, Medicaid, etc.) to Employment, or post-secondary education or adult services:</p> <ul style="list-style-type: none"> a. Require implementation of the transition planning be completed prior to exiting youth services - H 7739 Sub A as amended Rep. McNamara [<u>06/06/2012 House passed in concurrence</u>] & S 2446 Sub A Sen. Gallo [<u>06/07/2012 Transmitted to Governor</u>] b. Provide navigators to assist aging parents/caregivers of independent consumer with developmental disabilities transition to services; and c. Provide transition for young adults with autism spectrum disorders to adult service providers H 7928 Rep. Palumbo [04/11/2012 Committee recommended measure be held for further study] <p>6. Require neighborhood notification prior to chemical pesticide lawn treatments - S 2443 Sen. Jabour [02/16/2012 Introduced, referred to Senate Environment and Agriculture] & H 7802 Rep. Handy [04/11/2012 postponed at request of sponsor]</p> <p>7. Require Health Insurance Plans to cover specialty drug (Tier 4 Drug Category) in Tier 3 - H 7573 Rep. Keable [03/07/2012 held for further study]</p> <p>8. Refocusing the Disability Business Enterprise Program on assisting small businesses owned and controlled by person(s) with disabilities - H 7628 as Amended Rep. Walsh [<u>Placed on the Senate Consent Calendar (06/11/2012)</u>] & S 2605 as Amended Sen. Gallo [<u>06/07/2012 Transmitted to Governor</u>]</p> <p>9. Refocusing State and Municipal Disability Pension Systems to become Reemployment Systems - H 7616 Rep. Ehrhardt [03/01/2012 held for further study]</p>		
	<p style="text-align: center;">Discussion on Bills found Harmful</p> <p>12 S 2076 [01/18/2012 Introduced, referred to Senate Health and Human Services], H 7165 Sub A [<u>Placed on House Calendar (06/12/2012)</u>], & S 2560 Sub A as amended [<u>Placed on House Calendar (06/12/2012) for passage in concurrence</u>] ACTS RELATING TO INSURANCE - AUTISM SPECTRUM DISORDERS</p> <p>This act would require health insurance providers to cover psychological, psychiatric and pharmaceutical treatments for individuals with Autism Spectrum Disorders (insurers are currently required to cover ABA, physical therapy, occupational therapy, speech therapy). It also requires those supervising as well as providing ABA to be licensed as a behavioral analyst, assistant behavioral analyst or having relevant experience credentialed by the insurer.</p> <p>This act will take effect upon passage.</p> <p><i>The Commission is concerned about exempting Medicaid from providing physical therapy, occupational therapy, speech therapy, psychological, psychiatric and pharmaceutical treatments for individuals with Autism Spectrum Disorders. All health insurers, public and private, should be held to the same standard.</i></p> <p><i>If exemption of Medicaid was deleted the expansion to include psychological, psychiatric and pharmaceutical treatments is very worthwhile.</i></p>		

1-1 SECTION 1. Sections 27-20.11-1, 27-20.11-3 and 27-20.11-7 of the General Laws in

1-2 Chapter 27-20.11 entitled "Autism Spectrum Disorders" are hereby amended to read as follows:

1-3 **27-20.11-1. Mandatory coverage for Autism spectrum disorders.** -- (a) Every group
1-4 health insurance contract, or every group hospital or medical expense insurance policy, plan, or
1-5 group policy delivered, issued for delivery, or renewed in this state, by any health insurance
1-6 carrier, on or after January 1, 2012, shall provide coverage for autism spectrum disorders;
1-7 provided, however, the provisions of this chapter shall not apply to contracts, plans or group
1-8 policies subject to the Small Employer Health Insurance Availability Act, chapter 50 of this title,
1-9 ^{Added} Medical Assistance, chapter 40-8, ^{Added} or subject to the Individual Health Insurance Coverage Act,
1-10 chapter 18.5 of this title.

1-11 **27-20.11-3. Scope of coverage.** -- (a) Benefits under this section shall include coverage
1-12 for pharmaceuticals, ^{Added} applied behavior analysis, physical therapy, speech therapy, ^{Added} psychology,
1-13 psychiatric ^{Added}, and occupational therapy services for the treatment of Autism spectrum disorders, as
1-14 defined in the most recent edition of the DSM. Provided, however:

1-15 (1) Coverage for physical therapy, speech therapy and occupational therapy ^{Added} and
1-16 psychology, psychiatry and pharmaceutical ^{Added} services shall be, to the extent such services are a
1-17 covered benefit for other diseases and conditions under such policy; and

1-18 (2) Applied behavior analysis shall be limited to thirty-two thousand dollars (\$32,000)
1-19 per person per year.

2-20 (b) Benefits under this section shall continue until the covered individual reaches age
2-21 fifteen (15).

2-22 (c) The health care benefits outlined in this chapter apply only to services delivered
2-23 within the State of Rhode Island; provided, that all health insurance carriers shall be required to
2-24 provide coverage for those benefits mandated by this chapter outside of the State of Rhode Island
2-25 where it can be established through a pre-authorization process that the required services are not
2-26 available in the State of Rhode Island from a provider in the health insurance carrier's network.

2-27 **27-20.11-7. ~~Credentialing and contracting practices. Credentials.~~** -- (a) Any
2-28 individual providing ^{Added} or supervising ^{Added} applied behavior analysis treatment under this section shall
2-29 be:

2-30 (1) Individually licensed by the department of health as a ^{Deleted} ~~healthcare provider/clinician~~
2-31 ~~pursuant to chapter 42-35 or 42-35-1 et al. and nationally certified as a Board Certified Behavior~~
2-32 ~~Analyst (BCBA); and credentialed by the insurer;~~ ^{Deleted} ^{Added} licensed applied behavior analyst; or a licensed
2-33 applied behavior assistant analyst acting under supervision; or ^{Added}

2-34 (2) ^{Deleted} ~~Individually nationally certified as a Board Certified Assistant Behavior Analyst~~
2-35 ~~(BCaBA) supervised by a Board Certified Behavior Analyst who is licensed~~ ^{Deleted} ^{Added} Licensed by ^{Added} the
2-36 department of health as a psychologist; ^{Added} with equivalent experience or a psychologist practicing ^{Added}
2-37 ^{Deleted} ~~social worker or therapist; and credentialed by the insurer.~~ ^{Deleted} ^{Added} within their scope of practice. ^{Added}

2-38 (b) Nothing in this chapter shall be construed to require a change in the credentialing or
2-39 contracting practices of health insurers for mental health or substance abuse providers.

2-40 SECTION 1. This act shall take effect upon passage.



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MOTION: To find beneficial to 12 H 7165, & S 2560 ACTS RELATING TO INSURANCE - AUTISM SPECTRUM DISORDERS AS/JC passed HD abstained

12 H 7555 SUB A [*Scheduled for consideration (06/11/2012)*], H 7838 [04/03/2012 held for further study], & S 2652 SUB A ACTS RELATING TO PUBLIC RECORDS - ACCESS TO PUBLIC RECORDS [06/09/2012 *Scheduled for consideration (06/11/2012)*]

This act would make various amendments to the access to public records act, including: making public all records which are identifiable to an individual applicant for benefits, client, patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare, employment security, pupil records, all records relating to a client/attorney relationship and to a doctor/patient relationship, including and all personal or medical information relating to an individual in any files, including information relating to medical or psychological facts, personal finances, welfare, employment security, student performance, or information in personnel files unless individually-identifiable records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

It also would amend the access to public records requirements by ordering compliance with a request to take place within seven (7) business days and up to an additional twenty (20) business days once it is shown that the request is of a voluminous nature.

This act would take effect on September 1, 2012.

Repealing the existing exemption from public inspection of records that identify individual patients, school students, or clients will devastate health, human services and education and will have a direct impact on people with disabilities and public and private agencies..

Confidentiality is critical to establishing a level of trust that is essential to proper treatment, in health care and counseling. Without an assurance that confidentiality will be honored, vital information is withheld and it is impossible to ensure that proper course of treatment is prescribed. The bill's post-facto revocation of confidentiality will scare families away from seeking critical services in times of crisis. Rather than seeking assistance early, they will wait until too late, until serious harm or death occurs.

The bill should be amended by retaining on page 2 lines 12 through 17 the following:

"(A)(I)(a) All records which are identifiable to an individual applicant for benefits, client, patient, or student, including, but not limited to, medical treatment, welfare, employment security, pupil records, all records relating to a client/attorney relationship and to a doctor/patient relationship and all personal or medical information relating to an individual in any files, including information relating to medical or psychological facts, personal finances, welfare, employment security, or student performance."

On page 2 lines 14 & 15, In addition to lawyer/client and doctor/patient relationships, the act should also exempt clergy counseling relationships for government chaplains.

12 H 7555 SUB A Version

1-1 SECTION 1. Sections 38-2-2, 38-2-3, 38-2-4, 38-2-7, 38-2-8 and 38-2-9 of the General
1-2 Laws in Chapter 38-2 entitled "Access to Public Records" are hereby amended to read as follows:

1-3 **38-2-2. Definitions.** -- As used in this chapter:

1-18 (5) (†) "Public record" or "public records" shall mean all documents, papers, letters,
1-19 maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data
1-20 processing records, computer stored data (including electronic mail messages ^{Deleted}, ~~except specifically~~
2-1 ~~for any electronic mail messages of or to elected officials with or relating to those they represent~~
2-2 ~~and correspondence of or to elected officials in their official capacities~~ ^{Deleted}) or other material
2-3 regardless of physical form or characteristics made or received pursuant to law or ordinance or in
2-4 connection with the transaction of official business by any agency. For the purposes of this
2-5 chapter, the following records shall not be deemed public:

2-6 (A) (I) ^{Added}(a) ^{Added} All records ^{Deleted}, ~~which are identifiable to an individual applicant for benefits,~~
2-7 ~~client, patient, student, or employee, including, but not limited to, personnel, medical treatment,~~
2-8 ~~welfare, employment security, pupil records, all records~~ ^{Deleted} relating to a client/attorney relationship
2-9 and to a doctor/patient relationship, ^{Added} including ^{Added} ^{Deleted} ~~and~~ ^{Deleted} all ^{Deleted} ~~personal or~~ ^{Deleted} medical
information relating to

2-10 an individual in any files; ^{Deleted} ~~including information relating to medical or psychological facts,~~
2-11 ~~personal finances, welfare, employment security, student performance, or information in~~
2-12 ~~personnel files maintained to hire, evaluate, promote, or discipline any employee of a public~~
2-13 ~~body;~~ ^{Deleted}

2-14 ^{Added} (b) Personnel and other personal individually-identifiable records otherwise deemed
2-15 confidential by federal or state law or regulation, or the disclosure of which would constitute a
2-16 clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. al.; ^{Added} provided,
2-17 however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe
2-18 benefits, gross amount received in overtime, and ^{Added} any ^{Added} other remuneration in addition to salary, job
2-19 title, job description, dates of employment and positions held with the state or municipality,
2-20 ^{Added} employment contract, ^{Added} work location, business telephone number, the city or town of residence,
2-21 and date of termination shall be public. ^{Added} For the purposes of this section "remuneration" shall
2-22 include any payments received by an employee as a result of termination, or otherwise leaving

2-23 employment, including, but not limited to, payments for accrued sick and/or vacation time,
2-24 severance pay, or compensation paid pursuant to a contract buy-out provision. ^{Added}
2-25 (II) Notwithstanding the provisions of this section, or any other provision of the general
2-26 laws to the contrary, the pension records of all persons who are either current or retired members
2-27 of ^{Deleted} ~~the~~ ^{Deleted} ~~any public~~ ^{Added} any public ^{Added} retirement systems ^{Deleted} ~~established by the general laws~~ ^{Deleted}
^{Added} established by law, ^{Added}
2-28 ordinance or collective bargaining agreement, ^{Added} as well as all persons who become members of
2-29 those retirement systems after June 17, 1991 shall be open for public inspection. "Pension
2-30 records" as used in this section shall include all records containing information concerning
2-31 pension and retirement benefits of current and retired members of the retirement systems
2-32 ^{Deleted} ~~established in title 8, title 36, title 42, and title 45~~ ^{Deleted} and future members of said systems, including
2-33 all records concerning retirement credits purchased and the ability of any member of the
2-34 retirement system to purchase retirement credits, but excluding all information regarding the
3-1 medical condition of any person and all information identifying the member's designated
3-2 beneficiary or beneficiaries ^{Added} unless and until the member's designated beneficiary or beneficiaries
3-3 have received or are receiving pension and/or retirement benefits through the retirement system ^{Added}.

S 2652 SUB A Version

1-1 SECTION 1. Sections 38-2-2, 38-2-3, 38-2-4, 38-2-7, 38-2-8 and 38-2-9 of the General
1-2 Laws in Chapter 38-2 entitled "Access to Public Records" are hereby amended to read as follows:

1-3 **38-2-2. Definitions.** – As used in this chapter:

2-20 ~~(5)~~(6) "Public record" or "public records" shall mean all documents, papers, letters, maps,
2-21 books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data
2-22 processing records, computer stored data (including electronic mail messages, except specifically
2-23 for any electronic mail messages of or to elected officials with or relating to those they represent
2-24 and correspondence of or to elected officials in their official capacities) or other material
2-25 regardless of physical form or characteristics made or received pursuant to law or ordinance or in
2-26 connection with the transaction of official business by any agency. For the purposes of this
2-27 chapter, the following records shall not be deemed public:
2-28 (A)(I) ^{Added} (a) ^{Added} All records ^{Deleted} ~~which are identifiable to an individual applicant for benefits, client,~~
2-29 ~~patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare,~~ ^{Deleted}
2-30 ~~employment security, pupil records, all records~~ ^{Deleted} relating to a client/attorney relationship and to a
2-31 doctor/patient relationship ^{Added}, including ^{Added} ^{Deleted} ~~and~~ ^{Deleted} all ^{Deleted} ~~personal or~~ ^{Deleted} medical information
relating to an
2-32 individual in any files ^{Deleted}, ~~including information relating to medical or psychological facts, personal~~
2-33 ~~finances, welfare, employment security, student performance, or information in personnel files~~
2-34 ~~maintained to hire, evaluate, promote, or discipline any employee of a public body;~~ ^{Deleted}
2-35 ^{Added} (b) Personnel and other personal individually-identifiable records, the disclosure of which
2-36 would constitute a clearly unwarranted invasion of personal privacy; ^{Added} provided, however, with
2-37 respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross
2-38 amount received in overtime, and ^{Added} any ^{Added} other remuneration in addition to salary, job title, job
2-39 description, dates of employment and positions held with the state or municipality, work location,
2-40 business telephone number, ^{Deleted} ~~the city or town of residence,~~ ^{Deleted} and date of termination shall be public.
2-41 ^{Added} For the purposes of this section "remuneration" shall include any payments received by an
2-42 employee as a result of termination, or otherwise leaving employment. ^{Added}

2-43 (II) Notwithstanding the provisions of this section, or any other provision of the general
2-44 laws to the contrary, the pension records of all persons who are either current or retired members
2-45 of the retirement systems ^{Deleted} ~~established by the general laws~~ ^{Deleted} as well as all persons who become
2-46 members of those retirement systems after June 17, 1991 shall be open for public inspection.
2-47 "Pension records" as used in this section shall include all records containing information
2-48 concerning pension and retirement benefits of current and retired members of the retirement
2-49 systems ^{Deleted} ~~established in title 8, title 36, title 42, and title 45~~ ^{Deleted} and future members of said systems,
2-50 including all records concerning retirement credits purchased and the ability of any member of
2-51 the retirement system to purchase retirement credits, but excluding all information regarding the
2-52 medical condition of any person and all information identifying the member's designated
2-53 beneficiary or beneficiaries.



voting check off graphic

MOTION: To recommend the Executive Committee request the Governor veto 12 H 7555, H 7838, & S 2652 ACTS RELATING TO PUBLIC RECORDS - ACCESS TO PUBLIC RECORDS, unless the changes requested are included AS/RC passed, Abstain MS, HD

12 H 7572 AN ACT RELATING TO PUBLIC PROPERTY AND WORKS -- STATE PURCHASES [03/07/2012 held for further study]

This act would require any state-funded purchases of prosthetic devices be made by a vendor or manufacturer that has a headquarters or primary place of business within the state of Rhode Island.

This act shall take effect upon passage.

The fitting of prosthetic devices can be a very intrusive process. The fitting of artificial legs, arms and other prosthetic devices should be done by a trusted professional. Not all prosthetic devices are made or sold by Rhode Island based vendors or manufacturers.



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MOTION: To recommend the Executive Committee request the Governor veto 12 H 7572 AN ACT RELATING TO PUBLIC PROPERTY AND WORKS -- STATE PURCHASES RC/AS passed, Abstained HD

12 H 7797 AN ACT RELATING TO INSURANCE - MANDATED BENEFITS [03/27/2012 held for further study]

This act would create a commission, of 6 members of the general assembly, to review mandated healthcare coverage and eliminate those determined not to be critical, unless the general assembly chooses to re-enact them.

This act would take effect upon passage

Any review of mandated healthcare coverage should include people with chronic health impairments, medical professionals, and other stake holders. Most healthcare mandates were established for very sound medical practices that were being excluded from coverage, i.e. 48 hour recovery from child birth, pre-existing conditions, etc.

The best way to ensure all parties are heard is through the existing committee process. Bills should be proposed to repeal a mandated coverage, the appropriate committee should conduct hearings, then make a recommendation to the whole House (or Senate), the chamber should then vote on that proposal, etc. Rather than a small number of legislators repeal many provisions at once.

12 H 7200 [02/01/2012 held for further study], S 2363 [03/27/2012 held for further study], & S 2250 [01/26/2012 Introduced, referred to Senate Judiciary] ACTS RELATING TO MOTOR AND OTHER VEHICLES -- PARKING FACILITIES AND PRIVILEGES

This act would clarify the use of parking placards by persons or agencies serving persons with disabilities. The act amends RIGL 31-28-7.1 to allow visiting nurse associations or agencies employing nurses and therapists who are visiting individuals with disabilities to use a disability parking placard. It also amends the text so it reads that a valid holder of a placard shall be exempt from any parking fees or fines.

This act would take effect upon passage.

At most multi-family & apartment buildings there are not enough disability parking spaces to service people who truly can not walk or walk any distance. To have nurses and therapists who are able to walk into a building occupy the limit number of disability parking spaces forces those who are disabled to either wait until the nurse/therapist leaves or park further away and compromise their health. The current law allows the use of the disability parking permit when transporting someone who has the placard. It should never be used just for the

convenience of the nurse or therapist.



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MOTION: To recommend the Executive Committee request the Governor veto 12 H 7200, S 2363, & S 2250 ACTS RELATING TO MOTOR AND OTHER VEHICLES -- PARKING FACILITIES AND PRIVILEGES AS/RC passed, Abstained HD

12 H 7655 AN ACT RELATING TO EDUCATION -- CHILDREN WITH DISABILITIES [03/14/2012 held for further study]

This act would allow school districts to refer to and place special education students in non-public schools with educators who do not meet the Department of Education's certification requirements for public school regular or special education certification.

This act would take effect upon passage.

Why are only students in special education singled out for services by a non-credential teacher or other educator? The state has a process for emergency certification in cases where there aren't enough providers available. This would be a more appropriate avenue.



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MOTION: To recommend the Executive Committee request the Governor veto 12 H 7655 AN ACT RELATING TO EDUCATION -- CHILDREN WITH DISABILITIES SB/JC passed, Abstaining HD

12 H 8044 AN ACT RELATING TO MOTOR AND OTHER VEHICLES - MISCELLANEOUS RULES [05/15/2012 held for further study]

This act would amend the sunset provision of the 2011 seatbelt law that made violations a primary offense. The date of expiration will change from June 30, 2013 to June 30, 2012. Violations occurring after that date will be a secondary offense.

This act would take effect upon passage.

Seatbelts save lives and reduce the chance of a person in an automobile crash surviving but severely disabled. One of the major ways of reducing the rate of growth of health care, is by preventing disabilities.



voting check off graphic

MOTION: To recommend the Executive Committee request the Governor veto 12 H 8044 AN ACT RELATING TO MOTOR AND OTHER VEHICLES - MISCELLANEOUS RULES SB/AP passed, Nay AS

12 H 7907 AN ACT RELATING TO BEHAVIORAL HEALTH CARE DEVELOPMENTAL DISABILITIES AND HOSPITALS - GROUP HOMES [03/15/2012 for further study]

No person, or entity or entities in which that person has more than a fifty percent (50%) interest, shall maintain more than three (3) community residences in any one city or town for each ten thousand (10,000) of its inhabitants as determined by the last census taken under the authority of the United States or the state.

This act would take effect upon passage.

Limiting the number of group homes or other community residences would violate the US Fair Housing Amendments Act of 1988. Below is the

JOINT STATEMENT OF THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

GROUP HOMES, LOCAL LAND USE, AND THE FAIR HOUSING ACT

Since the federal Fair Housing Act ("the Act") was amended by Congress in 1988 to add protections for persons with disabilities and families with children, there has been a great

deal of litigation concerning the Act's effect on the ability of local governments to exercise control over group living arrangements, particularly for persons with disabilities. The Department of Justice has taken an active part in much of this litigation, often following referral of a matter by the Department of Housing and Urban Development ("HUD"). This joint statement provides an overview of the Fair Housing Act's requirements in this area. Specific topics are addressed in more depth in the attached Questions and Answers.

The Fair Housing Act prohibits a broad range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability. (1) The Act does not pre-empt local zoning laws. However, the Act applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities.

The Fair Housing Act makes it unlawful --

To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.

To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.

To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

What constitutes a reasonable accommodation is a case-by-case determination.

Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others.

HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable dispute resolution procedures, like mediation, as alternatives to litigation.

DATE: AUGUST 18, 1999



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MOTION: To recommend the Executive Committee request the Governor veto 12 H 7907 Sub A AN ACT RELATING TO BEHAVIORAL HEALTH CARE DEVELOPMENTAL DISABILITIES AND HOSPITALS - GROUP HOMES AS/AP passed unanimously

12 H 7806 [05/09/2012 Committee heard and continued] & S 2904 [**Scheduled for consideration (06/11/2012)**] ACTS RELATING TO STATE AFFAIRS AND GOVERNMENT This act would create a new chapter entitled "Criminal Background Check Act" that would provide for national background checks for all persons applying to be direct patient access employees in a long-term care facility or provider, including, but not limited to, those facilities licensed under chapters 23-17, 23-17.4, 23-17.7.1 and 40.1-24.

This act would take effect on January 1, 2013.

The employer should have the discretion to hire someone who committed a crime years ago and hasn't done so again. This is especially important in reintegrating persons who abused substances (and may have sold drugs to support their addiction) into society. Prior drug users may be the most effective people to work in recovery programs.

The act should be amended on page 5:

line 3 deleting the word "burglary";

line 5 deleting the words "sale or delivery of a";

line 6 deleting the words "sale or delivery of a"; and

line 10 by after the word "possession" inserting the words "involving sale or delivery of a controlled substance, or possession with intent to sell or deliver a controlled substance; burglary,"

On page 6 delete all of lines 8 through 26 and insert therein "An applicant or employee against whom disqualifying information is based on a level two offense has been found may request that a copy of the criminal background report be sent to the employer who shall make a judgment regarding the continued employment of the employee."



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MOTION: To recommend the Executive Committee request the Governor veto 12 H 7806 & S 2904 ACTS RELATING TO STATE AFFAIRS AND GOVERNMENT, unless the changes are incorporated AS/RC passed, Abstained HD



Announcer graphic

Announcements

Linda Ward

3:55



calendar graphic

Agenda and Scheduling the Next Meeting

Linda Ward

4:00

Items to be placed on the next meeting's agenda:

Next meeting will be on: Monday July 9, 2012 3 - 4:30 PM



alarm clock graphic

Adjournment

Linda Ward

4:30



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MOTION: To adjourn at 3:43 PM AS/JC passed unanimously.