Disability Rights Maryland

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Testimony before the House Appropriations Committee
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House Bill 1382 - Children in Out–of–Home Placement – Placement in Medical Facilities: Requires DHS to take steps to identify and place children in appropriate community placements and eliminate unneeded psychiatric hospitalization of children with disabilities in their care.

POSITION: SUPPORT

Disability Rights Maryland (DRM) is Maryland's designated Protection and Advocacy agency, and is federally mandated to advance the civil rights of people with disabilities. DRM advocates for systemic reforms and policies that improve services and supports for youth with disabilities, and ensures that their rights are protected. We regularly advocate for children in DHS care and custody who stay in clinical settings long past when they are recommended for discharge, because DHS has not been able to locate a safe placement for them. In many cases, these children remain hospitalized for months while DHS searches for a placement. It is important that new community placements, preferably therapeutic foster care or small community group homes, are developed and funded, as well as preventive and wraparound services to prevent crises and psychiatric hospitalizations whenever possible.

House Bill 1382 recognizes the grave impact that excessive time in hospital and institutional settings has on youth with emotional and behavioral disabilities.

We strongly believe that youth with disabilities have the right to live and thrive in their communities. DRM regularly receives calls from foster families, guardians and family members of youth in DHS custody who lack appropriate placements and services. Under the *Americans with Disabilities Act*, public entities, including DHS, are required to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). By definition, children overstaying their clinical treatments have no medical reason to be in a restrictive hospital setting and are appropriate for community-based placements or residential treatment programs. Further, children with disabilities have the right to a "free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living" under the *Individuals with Disabilities Education Act*. 20 U.S.C. 1400(d). Many of these children are denied their legal rights while hospitalized. When youth overstay hospital or inpatient treatments, the result is heartbreaking. Youth in overstay circumstances face significant harm, such as isolation, loss of friendships and significant relationships, severe trauma, and risk of abuse. Youth in these circumstances frequently cannot go outside or breathe fresh air for weeks or months on end,

often receive a paltry education through home-hospital teaching, and face daily living in highly sterile spaces.

Emergency rooms and hospitals are not designed to, nor do they provide, individual therapy, treatment, habilitation, ongoing behavioral support, and other services that children need to address the underlying behaviors and trauma that resulted in their hospitalization. These settings prioritize stabilization and medication of patients, with an eye to discharging them to ongoing services at the earliest possible date. Extending clinical stays beyond their medical necessity only hinders children and can exacerbate existing disabilities.

One of our current clients, "Frank," [1] a thirteen year-old young man in DHS custody, had been waiting in the hospital for an appropriate community placement since November, 2019. Prior to November, Frank lived with a foster family who were certified as therapeutic providers. This placement ended due to abuse from his then-foster mother, and the resulting instability resulted in Frank going into crisis and being admitted to the hospital for psychiatric treatment, where he remained for approximately two-and-a-half months. As a result of DRM's advocacy, he was recently moved to a temporary, 90-day placement at a Residential Treatment Center. Due to Frank's extensive abuse history, his being in a hospital environment was especially traumatizing. He had been removed from his biological home due to pervasive abuse and neglect, and his trauma at what he perceived as abandonment at being left in an inpatient psychiatric unit for months triggered numerous aggressive behaviors towards staff. The result was that he was physically restrained and injected with sedatives on multiple occasions. Frank's hospitalization disrupted a successful educational placement with caring teachers, and geographically separated Frank from his education guardian, who regularly spent time with Frank in the community. His education guardian calls Frank daily, and Frank always asks her when he'll be able to "go home." Frank does not have a long-term residential placement identified.

We acknowledge that DHS does submit applications to residential treatment programs and residential child care programs on behalf of hospitalized kids in their care and custody, and that it is difficult to find placements for children with challenging behavior. Additional community placements, including therapeutic foster care and small community group homes, are urgently needed. Preventive and wraparound services are needed to help kids remain in the community and out of crisis. Discharge planning should begin early in the child's stay, and back-up plans should be identified. Additional collaboration between sister agencies like the Developmental Disabilities Administration and the Behavioral Health Administration should be encouraged. All too often, it appears that DDA, BHA and DHR engage in prolonged negotiations over who will accept responsibility for finding and funding a placement for the child. It is our conclusion that urgent changes are necessary ensure that children and youth in DHS

[1] Our client's name has been changed to respect confidentiality.

care and custody and ensure are discharged from the hospital at the earliest possible time and receive appropriate care and services in the community.

House Bill 1382 also requires reporting to DRM, which allows for client advocacy and informs broader systemic-reform efforts.

As Maryland's Protection and Advocacy agency, DRM is deeply committed to ensuring that children and youth with disabilities do not overstay their clinical treatment and return to their communities as quickly as possible. Currently, we are only informed of these cases through client intakes and referrals, meaning that we do not know the overall scope of this issue. HB 1382 requires that each residential child care program and regional institute for children and adolescents report overstay data to DRM monthly. DRM has historically seen overstays occur due to a lack of proper supports within the community. With enhanced reporting, we will better be able to understand the scope of the problem and to advocate for effective solutions to keep youth in their communities.

Thank you for the opportunity to present this information to you today. For more information, please contact Luciene Parsley, Esq. at 410-727-6352 ext. 2494 or LucieneP@disabilityrightsmd.org.