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To: The Honorable Maggie McIntosh
Chair, Appropriations Committee

From: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

Re: House Bill 406 – Children in Out-of-Home Placements – Placement in Medical Facilities
– Oppose

The Office of the Attorney General urges the Appropriations Committee to unfavorably report House Bill 406. Although this bill recognizes a grave problem in serving children's basic needs, this bill does not provide a solution to the lack of resources that underpin that problem. House Bill 406 proposes to restrict foster children from accessing certain emergency inpatient mental health treatments and requires the local departments of social services to take custody of any children who remain in an inpatient facility longer than four hours after discharge.

House Bill 406 would compel the local departments of social services to remove children with complex mental health issues from inpatient mental health treatment facilities, even when the child was not previously in the care of the local department and the child's parents, guardians, or the local department cannot access an alternative that would serve the child's best interests and treatment needs. When a mental health facility recommends discharge of a child from inpatient treatment, Residential Treatment Centers (RTC) are commonly identified as the most appropriate service for the child. Unfortunately, because most RTCs have lengthy waiting lists, the Department of Human Services has found that it takes, on average, two months to locate and place the child in a recommended placement—whether inside or outside of the State. Alternative settings are not equipped to manage the complex mental health needs of those youth. The use of those settings place the child, the child's caregiver, and the broader community at substantial risk.

The bill contains specific measures that deny foster children the same access to emergency mental health treatment that is available for other children. The bill would strip certain mental health professionals of the authority to certify the necessity of inpatient treatment for foster youth and it would prevent them from admitting a foster youth with a demonstrated medical need absent a showing of recent behavioral changes in the youth's condition. That differential treatment extends even to a foster youth's needs for emergent care for conditions that are not related to mental-health conditions.

Moreover, the bill strips the juvenile court of its role to make an independent determination of what serves to further the foster child's best interests. It prohibits the juvenile court from placing a child in an inpatient facility if (1) an administrative hearing officer has made a determination that the child does not require such treatment even though the local department was not a party to that proceeding or allowed to present evidence to the contrary; (2) undefined "clinical staff" of the child's current facility determine it is not necessary; or (3) the local department cannot locate a suitable, alternative placement. In divesting the juvenile court's ability to act in the child's best interests, the bill threatens to deprive foster youth of critical care that other non-foster youth could receive.

Finally, the bill unnecessarily provides a private right of action by the hospital, emergency facility, or RTC against DHS to remove the child and to levy a fine. That fine is paid to a Commission whose sole function is to increase access to community health resources but does not provide a solution to the problem.

We urge the Committee to issue an unfavorable report on HB 406.

cc: Del. Reznik and Appropriations Committee Members