Disability Rights Maryland

Empowerment. Integration. Equality.

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SENATE BUDGET AND TAXATION COMMITTEE
TESTIMONY OF DISABILITY RIGHTS MARYLAND
HOUSE BILL 406 – Children in Out-of-Home Placements-Placement in Medical Facilities

March 30, 2022

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 located a safe placement for them. In many cases, these children remain hospitalized for months past their discharge date. **House Bill 406 recognizes the grave impact that excessive time in hospital and institutional settings has on youth with emotional and behavioral disabilities.** HB 406 also implements critical reforms and safeguards that ensure that children and youth are not needlessly warehoused in emergency departments and hospitals and are returned to community placements and settings as quickly as medically recommended. DRM cautions, however, that the true root of the grave hospital overstay problems that this bill addresses will not fully be remedied until 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. DRM is not opposed to the amendments that have been incorporated into the bill and we hope that future legislation will go even further toward protecting children's rights.

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 zero education services or 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 previous clients, "Frank," [1] a thirteen year-old young man in DHS custody, was cleared for medical discharge from a hospital but was forced to wait in the hospital for two-and-a-half months while an appropriate community placement was located. Prior to his hospital admission, 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 the two-and-a-half months. As a result of DRM's advocacy, he was finally 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 asked her when he would be able to "go home."

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

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

negotiations over who will accept responsibility for finding and funding a placement for the child. It is our conclusion that urgent changes are necessary to ensure that children and youth in DHS care and custody are discharged from the hospital at the earliest possible time and receive appropriate care and services in the community.

For the foregoing reasons, DRM supports HB 406.

Thank you for the opportunity to present this information to you today. For more information, please contact Megan Berger, Esq. at 410-727-6352 ext. 2504 or Megan.Berger@disabilityrightsmd.org.