

CONNECTICUT LEGAL RIGHTS PROJECT, INC.

Kirk W. Lowry, Legal Director
P. O. Box 351, Silver Street, Middletown, CT 06457
Telephone (860) 262-5017 • Fax (860) 262-5035
Email: klowry@clrp.org

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CLRP testimony regarding Proposed H.B. No. 5444 AN ACT CONCERNING THE
TREATMENT OF PERSONS WITH PSYCHIATRIC DISABILITIES

Position: against this bill

Senator Gerratana, Representative Ritter, and members of the Committee:

Connecticut Legal Rights Project, Inc. (CLRP) is a legal services organization that advocates for low-income individuals in institutions and in the community throughout the state who live with mental health conditions with regard to their civil rights. We support initiatives that integrate individuals into the community. We protect clients' rights under the Patients' Bill of Rights.

Proposed H.B. No. 5444 has as its stated purpose: "To enhance the care and treatment of persons with psychiatric disabilities." However, the bill proposes to amend the Patients' Bill of Rights with regard to the privacy rights of individuals living with mental health conditions in a way that interferes with those rights. It would "allow certain health care providers to obtain medical records for the treatment of patients in facilities for persons with psychiatric disabilities and to allow persons involved in formulating the patient's discharge plan to communicate with the patient's family members concerning the plan, subject to the provisions of the federal Health Insurance Portability and Accountability Act (HIPAA)." It does not specify who those health care providers are and would allow for communication relating to an individual's discharge plan to communicate with the patient's family members about that plan. The language of the existing statute recognizes the right to privacy of individuals receiving treatment in facilities: "Every patient treated in any facility for treatment of persons with psychiatric disabilities shall receive humane and dignified treatment at all times, with full respect for his personal dignity and right to privacy. Each patient shall be treated in accordance with a specialized treatment plan suited to his disorder. Such treatment plan shall include a discharge plan which shall include, but not be limited to, (1) reasonable notice to the patient of his impending discharge, (2) active participation by the patient in planning for his discharge and (3) planning for appropriate aftercare to the patient upon his discharge."

Ideally, an individual living with a mental health challenge will have the support of her family members. However, many of our clients (and other individuals living with mental health challenges) are not living in ideal circumstances. For some, family members may be the direct cause of trauma; for others, the long years of struggling with an illness results in family relationships being broken down. Regardless, it must be the individual's choice as to who is given information about her care, including discharge planning. If a person is capable of giving informed consent to sign a release, disclosure can be made to whoever is authorized to receive information. If an individual refuses to sign a release, or is not capable of giving this informed consent, an application for a conservator to be appointed can be filed, and if the family member is appointed as a conservator, that would provide access to the records. The rules regarding appointment of conservators are set in statute and require the probate court to make specific findings of psychiatric disability and inability to care for oneself.

By amending the Connecticut Patients' Bill of Rights, which is applicable to patients in facilities as defined in the statute, the bill may implicate constitutional equal protection rights by taking away patient's rights to privacy, but not non-disabled or non-institutionalized person's right to privacy.

The HIPAA Privacy Rule, 45 C.F.R. § 164.502, requires that health care providers keep protected health information private. The rule does allow for disclosure in the case of emergencies, imminent threats of harm to self or others, or with consent. (See, HHS guidance, "HIPAA Privacy Rule and Sharing Information Related to Mental Health, February 20, 2014.) State law, C.G.S. § 52-146e, also generally prohibits disclosure of information or records of a psychologist or psychiatrist.