

# Public Health Committee JOINT FAVORABLE REPORT

**Bill No.:** SB-922

AN ACT CONCERNING REVISIONS TO THE STATUTES PERTAINING TO

**Title:** DISCHARGES IN A RESIDENTIAL CARE HOME.

**Vote Date:** 3/12/2021

**Vote Action:** Joint Favorable

**PH Date:** 3/3/2021

**File No.:** 188

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## **SPONSORS OF BILL:**

The Public Health Committee

## **REASONS FOR BILL:**

To modify requirements for the involuntary discharge of residential care home (RCH) residents to allow RCHs to qualify as Medicaid home and community-based settings.

Among other things:

SB 922 requires the written discharge notice that RCHs provide to residents and their representatives to include contact information for the long-term care ombudsman, and for residents with mental illness or intellectual disability, the contact information for Disability Rights Connecticut.

The bill also requires RCHs to provide residents with a discharge plan for alternate residency within seven days after issuing the discharge notice and submit it to the Department of Public Health (DPH) in the case of an appeal. It requires the DPH to decide on RCH's request for immediate emergency transfers within 20 days after a hearing and to send a copy of the determination to the resident, the resident's representative, and the long-term care ombudsman.

It also allows RCHs or resident aggrieved by a DPH decision to appeal to the Superior Court and requires the court to consider the appeal a privileged case in order to dispose of it with the least possible delay.

## **RESPONSE FROM ADMINISTRATION/AGENCY:**

### **The Connecticut Department of Public Health (DPH):**

The Department of Public Health (DPH) supports SB 922 which would allow Residential Care Home (RCH) to qualify as a home and community-based setting under federal regulations

and enhance the rights of their residents experiencing involuntary transfer or discharge. As stated in the testimony, currently there are over 260 RCH residents receiving Medicaid services under the Connecticut Home Care Program for Elders waiver. Guaranteeing Connecticut's RCHs qualifies as home and community-based setting will help them to retain their home and community-based services. Current Statutes affords residents living in RCHs comparable protections as those afforded to tenants under the state's landlord tenant law, regarding an involuntary discharge. This legislation will also enhance the appeal rights of RCH residents who are notified of a pending transfer or discharge.

Additionally, stated in the testimony, through the collective work of DPH, Department of Social Services, Office of Policy and Management, State Long Term Care Ombudsman, Connecticut Legal Services and representatives of the RCHs, this proposal will:

- guarantee written discharge notice thirty days prior to the discharge date which will allow the resident to receive information about their rights to appeal such discharge along with a discharge plan for an alternative residency;
- ensure the resident or the resident's representative will have ten days from the receipt of the notice to request a hearing to appeal the discharge notice;
- require the Department to hold a hearing within seven days of receiving the appeal request and to issue a decision within twenty days after the conclusion of the hearing;
- require a discharge plan to be prepared by the facility, in a form and manner prescribed by the Commissioner, as modified from time to time. An RCH will be required to provide the discharge plan to the resident, and if a hearing is held, to submit the plan to DPH on or before the hearing;
- require an RCH to provide notice of the involuntary discharge to the Office of the Long-Term Care Ombudsman and, where appropriate, to the entity designated by the Governor to serve as the Connecticut protection and advocacy system;
- allow a facility or resident who is aggrieved by the final decision of the Commissioner to appeal the decision to the Superior Court. The Superior Court shall consider such an appeal as a privileged case in order to dispose of the case with the least possible delay.

**Mairead Painter, State Long-Term Care Ombudsman, Department of Aging and Disability Services (LTCOP):**

The LTCOP supports this legislation because it offers enhanced protections for residents of Residential Care Homes (RCHs). Requiring notice to their program will allow an opportunity for the office's Regional Ombudsman (RO) to intervene and support residents of RCHs to avoid discharge.

As outlined in the testimony, the language in SB 922 provides the necessary protections to the residents of RCHs against the potential loss of their home. Its passage will take LTCOP a step forward as our state continue its works to help RCH's transition to qualified Home and Community Based Settings (HCBS). Ms. Painter wrote. "I believe that moving in this direction will reduce the need for involuntary discharges and improve the quality of life for the residents of these homes."

### **The Department of Social Services (DSS):**

DSS supports this legislation and recognizes that Residential Care Homes (RCHs) have been longstanding partners in the continuum of long-term services and supports in Connecticut. Historically, RCHs have been reimbursed exclusively through state funding but DSS and RCHs believe funding should be increase for this important level of care. Passage of this bill will help qualify some of the services provided by RCHs for federal Medicaid reimbursement. As stated in the testimony, in their effort to achieve this goal, DSS and the Department of Public Health (DPH) collaborated on language to amend current law to conform to federal regulation that requires all settings in which people receiving Medicaid-funded home and community-based services must meet a range of requirements that promote choice, privacy and community integration. One of these requirements obligates Medicaid programs to ensure that residents of various types of congregate housing have comparable protections to those provided to tenants under states' landlord-tenant laws.

In addition, as stated in the testimony, the passage of S.B. 922 will:

- allow RCHs to qualify as home and community-based settings under federal regulations;
- promote fairness and consistency in responding to emerging issues such as violation of RCH rules, threatening or disruptive behavior, and/or nonpayment of rent;
- reduce transfers and discharges, as well as the number of readmissions that result from Appeals;
- support DSS' Plan to claim for services that are currently being provided by RCHs (medication administration and personal care support, including laundry, housekeeping, personal care assistance or cueing to complete activities of daily living) for Federal Medicaid Reimbursement;
- enable RCH residents to receive care management and services under Medicaid Waivers (E.G., The Connecticut Home Care Program for Elders and the Department of Mental Health and Addiction Services' Mental Health Waiver);
- increase census at RCHs as a result of new capacity to wrap Medicaid-Funded services around the current level of Supports provided by RCH. Approximately 217 individuals in sixty-seven distinct settings currently reside in RCHs and receive Medicaid Services under the Connecticut Home Care Program for Elders Waiver.

### **NATURE AND SOURCES OF SUPPORT:**

#### **Mag Morelli, President, LeadingAge Connecticut:**

Mag Morelli, President of LeadingAge Connecticut, offers support of this bill. As outline in the written testimony, SB 922 supports Connecticut's effort to qualify RCH setting as a Centers for Medicare & Medicaid Services (CMS) approved home and community-based setting for the purpose of allowing Medicaid waiver services to be delivered to residents of Residential Care Home (RCH). It will also change the process for transfer and discharge of residents in licensed RCHs.

LeadingAge represents eleven non-profit RCHs and are in strong support of the State's efforts to qualify RCHs as CMS approved home and community base settings. This setting is both supportive and affordable and can be a valuable community-based housing option for those choosing to receive Medicaid funded home and community-based services.

Included in the testimony it states, "several stakeholders worked with the Administration to draft language to revise the existing transfer and discharge process to comply with CMS rules, which includes an appeal process like those of the landlord tenant law. There are still some issues that we hope to resolve with the Administration and the Department of Public Health. We are hopeful that the current efforts will result in a solution that is agreed on by all parties."

## **NATURE AND SOURCES OF OPPOSITION:**

### **Penny Lore, Administrator, Parsonage Cottage Senior Residence located in Greenwich, CT:**

Parsonage Cottage Senior Residence is a 40-room senior home providing supportive services to the elderly for over 20 years. This bill would add a costly layer of appeals on a discharge process that already has significant challenges. As stated in the testimony, "we have had less than 5 incidents of involuntary discharge. This action is only taken to prevent harm to the resident, other residents, and staff. The proposed discharge policy will influence our future admission process." Overall, due to this, Parsonage Cottage Senior Residence is opposed to the passage of this bill.

### **Mary Hagerty, RN, BSN, Owner/Administrator, Four Corners Rest Home Inc.:**

Four Corners Rest Home is an 18-bed home that has been in existence for 47 years. They offer written testimony in opposition to the passage of this bill. As stated in the testimony, "we maintain a stable mental and physical well-being home setting. Ninety percent of our residents have mild to severe mental health issues that require monitoring and guidance that the individual and families cannot provide on their own. We are concern with this proposal because it would add a costly layer of appeals and a lengthy discharge process."

### **Carmine Castiglione, Owner/Manager, Garden Brook Residential Care Home:**

Garden Brook Residential Care Home operates a 16 room, 22 licensed facility located in Watertown, Connecticut. Their community includes clients with a physical, mental or substance abuse disability and older adults that are not able to live alone in a safe environment. They are opposed to this legislation as it "would change the landscape of RCHs and many would not be able to keep their resident safe. This would be a costly layer of appeals. Residential care homes are small communal living arrangement that are sometimes older homes with shared areas that does not allow for separation disruptive clients." It is also acknowledged in this written testimony that families of residents would not be in favor of this proposal. Garden Residential Care Home is opposed to the passage of this bill.

### **Kal Patel, Past President, Connecticut Association of Residential Care Homes**

**(CARCH):** CARCH offers written testimony in opposition to the passage of this bill. As stated in their testimony, CARCH has been in discussions with the Office of Policy and Management, Department of Public Health (DPH) and Department of Social Services (DSS) for several years on how our model of care could be considered a Home and Community-Based Model under federal regulations. "Although we had proposed a two-tiered model,

which unfortunately is not included in SB 922. Extending the landlord/ tenant laws to our residents and requiring appeals to go through Superior Court could take up to a year after the DPH renders its decision. We strongly recommend that DSS or another agency handles final appeals in order to allow for a comparable appeal process while avoiding a costly delay." Additionally, federal regulations do not require an exact procedure to the landlord/tenant law. The following 2020 CMS email to DSS was quoted in the testimony: *"In terms of compliance with the settings criteria, CMS requires that the state assure that the agreement provides protections that address eviction processes and appeals that are comparable to those provided under the jurisdiction's landlord tenant law."*

**Reported by: Beverley Henry**

**Date: 04/02/2021**