

Public Health Committee JOINT FAVORABLE REPORT

Bill No.: SB-453

AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S
RECOMMENDATIONS REGARDING TRANSFERS AND DISCHARGES OF

Title: RESIDENTIAL CARE HOME RESIDENTS.

Vote Date: 3/25/2022

Vote Action: Joint Favorable

PH Date: 3/21/2022

File No.:

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SPONSORS OF BILL:

The Public Health Committee

REASONS FOR BILL:

Currently, residents of Residential Care Homes (RCHs) have weaker protections from involuntary transfer or discharge from their home than tenants in apartments, houses, assisted living facilities, elderly housing projects and nursing homes. This situation also impacts eligibility of residents to qualify for federal Medicaid reimbursement for some services. This bill would align Connecticut law with changes in federal policy issued by the Centers for Medicare and Medicaid (CMS) regarding Medicaid reimbursement by allowing RCHs to qualify as a home and community-based setting. One of the requirements for a Medicaid program is to ensure that residents of various types of congregate settings have comparable protections as those under the states' landlord/tenant laws.

The bill requires the following actions regarding an involuntary discharge or transfer:

- the RCH provides the resident and their legally liable representative with a written discharge notice with the contact information for the long-term care ombudsman and, in the case of mental illness or intellectual disability, information for Disability Rights Connecticut.
- the RCH provides the resident with an alternate residency plan 7 days after issuing the discharge notice and, if there is an appeal, the notice must be submitted to DPH on or before the required hearing date.
- if the RCH should request an immediate emergency transfer request, DPH is required to decide on the request within 20 days.

- DPH is required to send a copy of the emergency discharge determination to the resident, the resident's legally liable representative, and the long-term care ombudsman
- If DPH determines an emergency discharge is not necessary, the RCH would proceed under the regular involuntary discharge process.
- If the RCH or the resident disputes the decision from DPH, they may appeal the decision to the Superior Court which must consider the appeal as a privileged case.

RESPONSE FROM ADMINISTRATION/AGENCY:

Manisha Juthani, Commissioner, Department of Public Health (DPH):

DPH strongly supports this bill. It is critical that the State ensure that RCHs can be considered a home and community-based setting to allow residents to continue to receive services. DPH collaborated with the Department of Social Services (DSS), the Office of Policy and Management (OPM), the State Long Term Care Ombudsman, and representatives of RCHs to develop the language in this bill which will ensure that residents of RCHs have necessary protections if facing an involuntary transfer or discharge.

Department of Social Services (DSS):

DSS supports this bill. Approximately, 250 individuals currently reside in RCHs and receive Medicaid service under the Connecticut Home Care for Elders Waiver. Historically, RCHs have been reimbursed exclusively through state funding. By implementing the provisions in this bill, some of the services provided by RCHs would qualify for federal Medicaid reimbursement.

NATURE AND SOURCES OF SUPPORT:

Mag Morelli, President, LeadingAge Connecticut:

LeadingAge strongly supports this bill which is the result of many years of collaborative work to accomplish the goal of modifying the transfer and discharge process to comply with CMS rules. One of the CMS requirements is to ensure that protections from discharge are comparable to the eviction rights under the landlord tenant law. LeadingAge believes this proposed bill accomplishes this goal.

Tina Yeitz, President, Connecticut Association of Residential Care Homes (CARCH):

CARCH participated in discussions with the Administration and other stakeholders in for several years to develop a process to ensure that the model of care received through RCHs could be considered a home and community-based model under federal regulations. CARCH believes that the language in this bill strikes a balance to provide a functional and transparent involuntary discharge. Residents would have a right to appeal such a discharge through the Superior Court. CARCH hopes there will be additional clarity for homes and residents regarding this process, and additional cooperation in ensuring the best interests of both the residents and staff in the home. The great majority of RCH residents are low-income with a mental or substance abuse disability. The RCH home is a community, and one disruptive

resident can have a significant negative impact on other residents or staff. RCHs do not want to involuntarily discharge residents and only does so if serious circumstances necessitate such action.

NATURE AND SOURCES OF OPPOSITION:

Kevin Brophy, Managing Attorney of Elder Law, Greater Hartford Legal Aid (GHLA):

Two years ago, GHLA supported the Governor's Bill HB 5020 because it provided greater housing protections for residents of RCHs. However, GHLA opposes this bill because it provides significantly less than that of the Governor's proposal. It does not compare to CT's housing protection requirements for the following reasons:

- The discharge notice is inadequate because it does not state the reason for the discharge and does not indicate to where the resident is being discharged.
- The time to appeal is too short.
- The bill does not state that the RCH has the burden of proving the grounds for discharge.
- The resident should have more time to find alternate housing.
- Regarding an emergency transfer/discharge GHLA opposes and *ex parte* order by DPH without a hearing first.

Failure to meet comparability requirements could lead to the CMS rejecting Connecticut RCHs as home and community -based settings. GHLA opposes the bill and includes in its testimony substitute language from legal services.

Reported by: Kathleen Panazza

Date: 4/5/2022