



Disability Rights Center of Kansas

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DATE: March 11, 2005

TO: Representative Jim Morrison, Chairman
Members of the Committee

FROM: Michael Donnelly, Director of Policy & Outreach

RE: SB 116

I wanted to follow-up on some conversations I have had with members of the Committee in the last few days. As I said in my testimony before the Committee SB 116, with the amendments proposed by Attorney General Kline and DRC, will close gaps in the system designed to protect people with mental illness, developmental or other disabilities that reside in small group homes, residential care facilities or other residential settings from being abused, neglected or exploited. There were concerns raised about the Senate Committee's version that we believe we have addressed all of those concerns, e.g., schools, nursing facilities, DD providers and community mental health centers. DRC believes that the balloon amendment offered on March 11, 2004 to SB 116 has eliminated the last of those concerns.

That being said, there continues to be some confusion with regard to the protection and advocacy system access authority language. Please understand that without DRC's federal access authority the Kaufman houses would still be operating and their residents would still be experiencing their former lives. We are investigating another residential location even now using that same authority.

However, when DRC went to the Kaufman house in the beginning the DRC staff were rejected because the federal authority was not recognized by the facility operators. After convincing the local law enforcement agency of that authority DRC was able to contact the resident referred to us by Attorney general Phill Kline. The facility we are currently investigating needed convincing too. The facilities licensed under SB 116 (K.S.A. 75-3307b) need to be clear that the officially designated protection and advocacy system has the responsibility and right to investigate abuse, neglect and exploitation. I have provided you with language from the federal law (42 USC 15043 and CFR 1386.19) that gives the

same authority to access places where people are served, the people themselves and their records when abuse and / or neglect has occurred or there is reason to believe it has occurred. This is not a new concept.

As you consider SB 116 please remember that the state has several tools available to prevent and investigate abuse, neglect and exploitation of its citizens with disabilities. Regardless of whether it is SRS, the Department on Aging or the designated Protection and Advocacy System (DRC), the state law should empower each of those tools to carry out their responsibilities without un-necessary and false barriers to protecting the most vulnerable of Kansas citizens.

Thank you for your consideration.

See below language from federal law and federal regulations on protection and advocacy system access authority:

US CODE: Title 42,15043

TITLE 42 > CHAPTER 144 > SUBCHAPTER I > Part C > § 15043Prev | Next

§ 15043. System required

Release date: 2003-07-24

(a) System required

In order for a State to receive an allotment under part B of this subchapter or this part—

(1) the State shall have in effect a system to protect and advocate the rights of individuals with developmental disabilities;

(2) such system shall—

(A) have the authority to . . .

(B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(C) . . .

(D) . . .

(E) . . .

(F) . . .

(G) . . .

(H) have access at reasonable times to any individual with a developmental disability in a location in which services, supports, and other assistance are provided to such an individual, in order to carry out the purpose of this part;

The locations where the Protection and Advocacy System is responsible to investigate abuse, neglect or exploitation is defined in:

C.F.R 1386.19

Subpart B—State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities

§ 1386.19 Definitions.

As used in §§ 1386.20, 1386.21, 1386.22 and 1386.25 of this part the following definitions apply:

Abuse means any act or failure to act which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with developmental disabilities, and includes such acts as: Verbal, nonverbal, mental and emotional harassment; rape or sexual assault; striking; the use of excessive force when placing such an individual in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations or any other practice which is likely to cause immediate physical or psychological harm or result in long term harm if such practices continue.

Facility includes any setting that provides care, treatment, services and habilitation, even if only “as needed” or under a contractual arrangement. Facilities include, but are not limited to the following: Community living arrangements (e.g., group homes, board and care homes, individual residences and apartments), day programs, juvenile detention centers, hospitals, nursing homes, homeless shelters, jails and prisons.

Full Investigation means access to facilities, clients and records authorized under these regulations, that is necessary for a protection and advocacy (P&A) system to make a determination about whether alleged or suspected instances of abuse and neglect are taking place or have taken place. Full investigations may be conducted independently or in cooperation with other agencies authorized to conduct similar investigations.