

**Act Number:** 09-065  
**Bill Number:** 854  
**Senate Pages:** 1221, 1479-1481 4  
**House Pages:** 4276-4279 4  
**Committee:** Human Services: 611-612, 641, 644, 848-851 8

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Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 139, Senate Bill Number 854, Mr. President, I move to place this item on the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Moving to calendar page 5, Calendar 140, Senate Bill Number 872, Mr. President, I move to refer this item to the Committee on Public Health.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 147, PR. Calendar 149, Senate Bill Number 638, Mr. President, I move to refer this item to the Appropriations Committee.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 150 marked passed temporarily.

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Agenda Number 3, Emergency Certified Bill 6716 and  
House Bill -- correction, 6379.

Turning to the calendar, calendar page 2,  
Calendar Number 475, Senate Resolution Number 19;  
Calendar 476, Senate Resolution Number 20; Calendar  
477, Senate Joint Resolution Number 74.

Calendar page 4, Calendar Number 139, Senate Bill  
854.

Calendar page 6, Calendar 178, Senate Bill 873.

Calendar page 7, Calendar 194, Substitute for  
Senate Bill 756.

Calendar page 8, Calendar 223, Substitute for  
Senate Bill 46.

Calendar page 10, Calendar Number 240, House Bill  
Number 6401.

Calendar page 12, Calendar Number 264, Substitute  
for Senate Bill 1023.

Calendar page 14, Calendar 328, Substitute for  
Senate Bill 814.

Calendar page 19, Calendar Number 400, House Bill  
6351.

Calendar page 20, Calendar Number 402, Substitute  
for House Bill 6193.

Calendar page 21, Calendar 408, House Bill 6322;

Calendar 409, Senate Bill 1013.

Calendar page 23, Calendar 423, Substitute for  
Senate Bill 1010.

Calendar page 27, Calendar 443, Substitute Senate  
Bill 1149; Calendar 447, Senate Bill 673; Calendar  
448, Senate Bill 1029.

Calendar page 30, Calendar 459, House Bill 5138;  
Calendar 461, House Bill 6406; Calendar 462,  
Substitute for House Bill 6537.

Calendar page 39, Calendar Number 81, Substitute  
for Senate Bill 760; Calendar 83, Senate Bill 762;  
Calendar 99, Senate Bill 787.

Calendar page 40, Calendar 119, Substitute for  
Senate Bill 778.

Calendar page 43, Calendar 171, Senate Bill 251.

Calendar page 46, Calendar Number 266, Senate  
Bill Number 382.

Calendar page 51, Calendar Number 356.

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Mr. President, I believe that completes those  
items previously placed on the first Consent Calendar.

The Senate is now voting by roll call on the  
Consent Calendar, will all Senators please return to  
the chamber. The Senate is now voting by roll call on  
the Consent Calendar, will all Senators please return

to the chamber.

THE CHAIR:

The machine is open.

Members, please check the board to see if your vote is properly cast and properly recorded. If all members have voted, the machine will be locked.

Would the Clerk please take a tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number 1. Total number voting, 35; those voting yea, 35; those voting nay, 0; those absent/not voting, 1.

THE CHAIR:

Consent Calendar 1 is passed.

Senator Looney.

SENATOR LOONEY:

Yes. Thank you, Mr. President. Mr. President, the two items that appeared on Senate Agenda Number 3, have just been passed on the Consent Calendar. I would move that the first item from Senate Agenda Number 3, House Bill 6716, the emergency certified bill, I move for immediate transmittal of that item to the Governor.

THE CHAIR:

Motion is for immediate transmittal to the

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DEPUTY SPEAKER ALTOBELLO:

The bill as amended by House A passes.

Would the Clerk please call Calendar 544.

THE CLERK:

On page 18, Calendar 544, Senate Bill Number 854,  
An Act Concerning The Office of Protection and  
Advocacy for Persons With Disabilities, favorable  
report of the Committee on Human Services.

DEPUTY SPEAKER ALTOBELLO:

Representative Butler of the 72nd District, you  
have the floor, sir.

REP. BUTLER (72nd):

Thank you, Mr. Speaker. I move for acceptance of  
Joint Committee's favorable report and passage of the  
bill.

DEPUTY SPEAKER ALTOBELLO:

Question before the chamber is acceptance of the  
Joint Committee's favorable report and passage of the  
bill.

Please proceed, sir.

REP. BUTLER (72nd):

Thank you, Mr. Speaker. Today's a new day, the  
purpose of this bill is to protect the rights of  
persons with disabilities. The Office of Protection

and Advocacy for Persons with Disabilities is an independent state agency whose purpose is to protect and advocate for the civil rights of people with disabilities. This bill adds to the directors' existing powers the authority to ensure that all aspects of the agency's operations comply with federally-established confidentiality requirements. By law, the director must ensure that all aspects of the agency's operations conform to federal protection and advocacy requirements for program independence and authority. I urge passage of the bill.

DEPUTY SPEAKER ALTOBELLO:

Question before the chamber is passage of the bill. Would remark on the bill?

Representative Gibbons of the 150th, you have the floor, madam.

REP. GIBBONS (150th):

Thank you, Mr. Speaker. It's a nice day when Representative Butler and I stand on the same side and urge passage of a bill, which I urge my colleagues to do. James McGaughey who's the Executive Director of the Office of Protection and Advocacy, as well as Nancy Shaffer who is our long-term ombudsman, both support -- stand in support of this bill and urge that

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the chamber pass it so that our state statutes come in compliance with federal law. I urge everyone to vote green. Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, madam.

Further on the bill? Further on this bill?

If not, staff and guests please retire to the well of the House.

Members at your seats, the machine will be open.

THE CLERK:

The House of Representatives is voting by roll call, members to the chamber. The House is voting by roll call, members to the chamber, please.

DEPUTY SPEAKER ALTOBELLO:

Have all the members voted? Have all the members voted?

If so, the machine will be locked.

Clerk will take a tally.

A VOICE:

If you're in the room, you've got to vote.

DEPUTY SPEAKER ALTOBELLO:

Representative Hurlburt.

REP. HURLBURT (53rd):

Thank you, Mr. Speaker. In all the confusion I

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forget to vote, but I'd like my vote to be cast in the affirmative. Thank you.

DEPUTY SPEAKER ALTOBELLO:

Representative Hurlburt in the affirmative.

And the Clerk will announce the tally.

THE CLERK:

Senate Bill Number 854 in concurrence with the Senate.

Total Number Voting	141
Necessary for Passage	71
Those Voting Yea	141
Those Voting Nay	0
Those Absent/Not Voting	10

DEPUTY SPEAKER GODFREY:

Bill is passed in concurrence.

Will the Clerk please call Calendar 464.

THE CLERK:

On page 42, Calendar 464, House Bill Number 5025,  
An Act Concerning the Use of Electronic Surveillance  
Equipment in the Public Areas of Retail Stores and  
Other Commercial Establishments, favorable report of  
the Committee on General law.

DEPUTY SPEAKER GODFREY:

The distinguished Vice Chairman of the Judiciary

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discharges, usually from a treatment program or professional service provider that operates independently of the residents. And the bottom line is that sometimes the resident doesn't know what to do, is overwhelmed by the prospect of impending homelessness. If we hear about it within the ten days that's currently allowed in statute, we can help them to request a hearing. But if it's over the ten days, there is really nothing they can do. So we are asking for that time frame to be extended.

We are also asking that nonlawyer advocates be allowed to represent people at those hearings. Right now, the Health Department has rules that they are not able to do that, absent a statutory change, so we are asking that the statute allow that to happen. They're administrative hearings. It's very unlikely that these folks can get lawyers to represent them on these matters, and I think with the fiscal crisis we are all facing and legal services are facing, it's less likely in the future. So we are asking for those two things.

Just one other note. I note that since we have suggested this bill, we've been approached by other advocates who say, you know, it would be nice if they, too, could be included. Right now the language refers to advocates from the Office of Protection and Advocacy. We have no objection to that. In fact, we are working with them on some language so we would hope that you would consider that favorably.

The other bill that I want to comment on is raised Bill 854, an act concerning the Office of Protection and Advocacy for Persons with Disabilities. This bill clarifies our office's obligation to follow the requirements of federal

protection and advocacy statutes and regulations with respect to the confidentiality of client information. Our state-enabling legislation -- our office operates pursuant to both state and federal statutory mandates.

The state legislation has a section that obligates us to administer our programs in compliance with federal requirements and then goes on to list certain of those requirements that have to do with independence and authority. Unfortunately, it doesn't say anything about client confidentiality. And so what happens is sometimes people get very confused about what -- whether -- when they call our office and share information with us about their situations, whether we can give them some assurance that that information is shared in confidence. Of course, there are different layers to that because if a lawyer from our office begins to represent them, then there is attorney-client privilege, and so forth, but not every situation where people call us and tell us about their health situation or their finances, and so forth, not every situation rises to the level where a lawyer from our office is involved. So we're asking for that clarification. We think it would be a good thing for our clients, and we give -- generally, give notice to the fact that there is an existence of federal regulations that you won't necessarily see reference to in state statute unless this bill goes forward. So that's what I have to say. If there are any questions, I will try to answer them.

SENATOR DOYLE: Any questions? Chairman.

REP. WALKER: Good morning. On 6418, can you explain to me what -- what the cost -- if there are cost savings that would be involved in this whole

KEVIN LOVELAND: I don't know -- my expectation is that's the case assuming there is additional Workforce Investment Act funding is included in that, but I don't know the details. And I'm looking forward to, actually, this week, I am sure we'll be getting a lot more information about that.

REP. BUTLER: Okay. Because that -- that will be crucial because with a lot of people that are losing their jobs and looking to get back into the job market that's critical towards their re-entry towards gaining new employment. Thank you very much.

Thank you, Mr. Chairman.

SENATOR DOYLE: Thank you, Representative Butler.

Any other questions? Seeing none, thank you very much.

The next speaker is Nancy Shaffer, then Senator Dan Debicella -- well, actually, I'll have to probably start rotating public persons.

Nancy Shaffer is next, then I'll go to -- the first person of the public I'll alternate is Tom Fanning, and then Senator Dan Debicella. So Nancy Shaffer.

Good morning, Nancy.

NANCY SHAFFER: Good morning, Senator Doyle, and members of the Human Services Committee. My name is Nancy Shaffer, and I am the State Long-Term Care Ombudsman, and I appreciate being here today to speak to you on behalf of the aging and disabled residents of the state of Connecticut.

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HB 6400  
SB 854

or in this state, that that's the case, and we all expect that. Both, the government, who pays for the majority of care, and the consumer, who requires the care, have the right to know who is providing that care, as well as transparency related to the fiscal solvency.

Especially, in this version of the strengthening of nursing home oversight, in section 2, it discusses the quality of care, and I think that's an essential piece to the nursing home oversight.

The ombudsman program documented thousands and thousands of hours as a program contact with nursing home residents during just the fiscal year -- federal fiscal year of 2008. It was actually one of our volunteers that first noted that the Haven facility in Jewett City went without heat for their residents in -- I think it was 2006. So I would urge that you take a serious look at that bill and give that your consideration.

And, then, finally I lend my support to raised Bill 854. This protects the confidentiality to persons with disabilities, and I think that we can all agree that that's of utmost importance for everyone as a patient and as a citizen. Thank you and if you have any questions.

SENATOR DOYLE: Thank you.

Any questions from committee members? Seeing none, thank you very much.

NANCY SHAFFER: Thank you.

SENATOR DOYLE: As I said, we're going to start alternating to public. So next up is the first

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# STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR  
PERSONS WITH DISABILITIES  
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Testimony of the Office of Protection and Advocacy for Persons with Disabilities  
Before  
The Joint Committee on Human Services

Presented by: James D. McGaughey  
Executive Director  
February 17, 2009

Good morning Senator Doyle, Representative Walker and Members of the Committee. Thank you for this opportunity to comment on several of the bills on your agenda today, and thank you for raising them. They both have significance for our Office and the people we serve.

**Raised Bill No. 6418**, AN ACT CONCERNING TRANSFER OR DISCHARGE OF  
RESIDENTIAL CARE HOME PATENTS

This bill would do two things: First, it would give a resident of a Residential Care Home fifteen calendar days in which to request a hearing to challenge a decision by the facility to discharge or transfer him or her. Current statute provides only ten calendar days, which include holidays and weekends. Second, the bill would allow non-attorney advocates to represent the resident at such a hearing.

Our awareness of the need for these changes has grown from our involvement on behalf of a number of residents of these facilities over the past several years. Residential Care Homes used to be called Homes for the Aged, or sometimes by the more generic name of "boarding homes". These days, many of the residents are people who have psychiatric disabilities. Residential Care Homes are not like nursing homes or group homes in that they do not provide medical care, social services, supervision or programming. Although they are licensed by the Department of Public Health, requirements and oversight are minimal, and they vary considerably in size and character.

The people who live in Residential Care Homes generally have few personal resources and options. Over the past several years our PAIMI program (Protection and Advocacy for Individuals with Mental Illness) has attempted to reach out to the residents of these homes to inform them about their rights and assist in solving problems they may be having accessing services. As a result, we have lately begun to receive referrals involving pending discharges, usually from a treatment program or professional service provider that operates independently of the residence. The discharge or transfer notice a resident receives informs him or her of their right to request a hearing from the Commissioner of Public Health. However, most residents are initially uncertain about the procedure, and are unaware of potential sources of help or that the facility is supposed to assist them in locating other housing. Many are simply resigned to eventual homelessness. The bottom line is that by the time the matter is referred to our Office or

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some other source of assistance, it is often too late to request a hearing. The current ten day time limit – which includes holidays and weekends – is simply too short to afford a meaningful opportunity to be heard. It should be noted that these discharge hearing provisions do not apply in emergency situations. The law allows for expedited transfers and discharges (and an after-the-fact hearing) "... where failure to effect an immediate transfer or discharge would endanger the health, safety or welfare of the resident or other residents..."

The second change we are seeking also involves a meaningful opportunity to be heard - more specifically a right to advocacy representation at the DPH administrative hearing. DPH has ruled that only licensed attorneys can represent residents at discharge or transfer hearings. The problem is that there simply are not enough attorneys available to provide representation at this level. Advocates can accompany a resident to one of these hearings, but, unless they have factual information about which to testify, the advocate must sit silently while the resident attempts to put on his or her own case. With budget reductions currently being experienced by legal service and public interest programs, this picture is going to worsen before it gets better. Representation by paralegals and lay advocates is permitted in most administrative forums. I would urge that you assure this same right to residents of Residential Care Homes.

One further note: as currently drafted, the provision for representation by a lay advocate applies only to advocates from our Office. Since we first suggested language for the bill, I have become aware of at least one other advocacy group that also faces the same limitations on the role their lay advocates can play at hearings. We are working with them on some substitute language for Section 1 (b) that would include them. We hope you will consider, and act favorably on it.

**Raised Bill No. 854, AN ACT CONCERNING THE OFFICE OF PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES.**

This bill clarifies our Office's obligation to follow the requirements of federal protection and advocacy statutes and regulations with respect to the confidentiality of client information. Our State enabling legislation already requires that we "ensure that all aspects of agency operations conform to federally established protection and advocacy requirements for program independence and authority...", and then goes on to list a number of specific federal requirements having to do with the agency's independence and authority. Unfortunately, that listing does not specifically include reference to federal confidentiality requirements, which has led to some misunderstandings. Federal regulations do require that we maintain the confidentiality of client records, although the exact wording varies somewhat between the various federal program statutes and regulations. An explicit reference to this fact would give clearer notice of the existence of those requirements to all parties, and greater assurance to our clients that information they share with us when they call our Office for information and advice cannot be routinely obtained by others. I urge you to support this bill.

Thank you for your attention. If there are any questions, I will try to answer them.



# STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES

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## HUMAN SERVICES COMMITTEE

Public Hearing

February 17, 2009

Good morning distinguished chairpersons and members of the Human Services Committee. My name is Nancy Shaffer and I am the State Long Term Care Ombudsman. I appreciate the opportunity to speak to you today on behalf of the aging and disabled long term care residents of our state. I comment today in strong support of two of the bills before you today and also encourage your support of a third bill.

Raised Bill No. 6418 AN ACT CONCERNING TRANSFER OR DISCHARGE OF RESIDENTIAL CARE HOME PATIENTS.

Raised Bill No. 6418 provides enhanced safeguards for Residential Care Home residents when they face notice of an involuntary discharge from their home. I respectfully urge your support of this legislation. This bill provides the Residential Care Home resident opportunity to file a request for a hearing up to fifteen days after receipt of notification, excluding Saturdays, Sundays and state holidays. And the bill requires that an appeals hearing be held not later than seven days, again excluding Saturdays, Sundays and state holidays after receipt of such request. The bill allows non-attorney advocates to represent individuals at hearings to appeal a transfer or discharge. Why is this so important? It is the experience of the Long Term Care Ombudsman Program that admissions, transfers, discharges and evictions complaints are second only to care complaints received from residents, their family members and other responsible parties. In Federal Fiscal Year 2008, for example, the total complaints of this nature from all Connecticut sources (skilled nursing facility, residential care home and assisted living facility) accounted for nearly 20% of all complaints received. Interestingly though, the complaints received from residential care home residents was only a very small fraction of that 20%. In part, this is reflective of the fact that there are many fewer Residential Care Home residents in the long term care continuum. But, I believe the reason for this is also that Residential Care Home residents, generally speaking and in the experience of the Ombudsman Program, do not always have the significant family involvement and support network that many other long term care residents enjoy (in fact most of the nursing home complaints of this nature come from family members or other sources rather than the resident). So, when the Residential Care Home resident receives an involuntary discharge notice, they do not always have someone readily available to advocate on their behalf. Frequently, the Ombudsman Program is called into the situation at the "eleventh hour", just prior to or even after the appeal hearing, when it is then difficult to develop an adequate advocacy effort on the resident's behalf.

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Very importantly, I recommend the Committee includes language in this bill that mirrors the current language in Connecticut General Statute 19a-535, which states 'The notice shall also include the name, mailing address and telephone number of the State Long Term Care Ombudsman.'

Raised Bill No. 6400 AN ACT CONCERNING THE STRENGTHENING OF NURSING HOME OVERSIGHT.

Connecticut must have clear expectations for quality care for the most vulnerable and frail members of our society. Both the government-who pays for the majority of care and the consumer-who requires the care, have the right to know who is providing that care as well as transparency related to fiscal solvency. When the entity who owns the actual physical asset of the nursing home has virtually no responsibility or accountability for finances or the adequacy of the care provided the system for expecting and providing quality care is broken. When the top priority for owners and investors is profit, rather than providing staffing and resources necessary to ensure quality care for our loved one, we must implement appropriate safeguards.

It is therefore essential for Connecticut to provide greater nursing facility oversight. We must know about facility ownership, nursing management services and financial solvency. Greater oversight of nursing home facilities may be the single most effective approach to ensuring that another Haven Healthcare catastrophe is not repeated. As State Ombudsman I fully support legislation that will ensure the examination of financial solvency of our nursing homes on an ongoing basis. I urge you to give consideration to Raised Bill No. 6400 which establishes a Nursing Home Financial Advisory Committee

Raised Bill No. 854 AN ACT CONCERNING THE OFFICE OF PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES

Lastly, I lend my support to Raised Bill No. 854. This bill protects the confidentiality of persons with disabilities and there is no question in any of our minds that all individuals should be afforded the same rights to confidentiality and protected health information.

I thank you for your consideration of my testimony.