DISABILITY RIGHTS VERMONT

To: **House Committee on Healthcare**

Re: **Senate Bill S. 189 -- An act relating to mental health response service guidelines and social service provider safety**

From: **Disability Rights Vermont**
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Thank you for the invitation to speak with this Committee today, as it relates to Senate Bill S. 189. First, with respect to the first piece of this proposed bill related to mental health response protocols, Disability Rights Vermont[1] previously testified on this bill when it was with the Senate, and as a result of our testimony, I was informed that we would be added to the list of entities the Department should consult. Today I spent far too much time looking for a draft of the bill that reflected that change and could not find it. Perhaps DRVT would fall under the second section containing organizations the Departments "may" consult with regarding social service provider safety. However, DRVT is uniquely equipped to balance the scale in these

[1] Disability Rights Vermont is the Protection and Advocacy (P&A) agency for the State of Vermont. As many of you probably know, the Protection and Advocacy system was established, in part, after the horrifying and dehumanizing treatment of people with disabilities was exposed at the Willowbrook, residential school in New York. Our role as the P&A agency makes us keenly aware of the importance of our community care providers and we support protecting them as they care for the most vulnerable members of our communities.

discussions by being the protection and advocacy agency for the State AND as a law office well versed in the legal requirements the State must abide by. So, I would first ask that this committee consider explicitly adding DRVT into the list of required consultants.

Second, more on point for today's discussion perhaps, is the proposed language in Section 3, related to denying or reducing services to individuals without explicit due process and safeguards in place. DRVT wholly supports the testimony presented by the Long-Term Care Ombudsman on this issue, and the language they have proposed in an attempt to mitigate some of the potential negative consequences of this section as written. In addition to the reasons mentioned by the LTCO, DRVT suggests that this committee ground its considerations in the basic principle that everyone involved in these scenarios are all valued equally. Yes, our healthcare workers are incredibly important and valuable and they should be able to be safe, but the people they are serving have that same amount of importance and value, and should also have the right to be safe and to receive care when and how they need it. Denying or reducing someone's care as a result of a behavior that the individual may not have the ability to control, or perhaps would be able to control with MORE, not less, services, creates a greater likelihood that the

individual impacted will suffer some degree of harm. Insufficient care or no care at all may result in deterioration, additional behaviors that might result in even worse outcomes or justice involvement, more restrictive placements in the face of a lack of community supports, the list is endless. The ask of the disability community is brief: If Vermont is going to allow unilateral discontinuation of care when care is needed, there has to be an explicit right to challenge that decision.

In 1999 the Supreme Court of the United States ruled in *Olmstead v. L.C.* that patients should be treated in the least restrictive situation consistent with their conditions. This has generated references to "the *Olmstead* decision" or "*Olmstead* requirements" or, more commonly, boilerplate clauses in various bills and amendments. *Olmstead* though represents more than a charge to provide care in the least restrictive environment. It is a mandate to provide the least restrictive constraints on the autonomy or self-advocacy of a patient[2].

DRVT has testified a few times this year. In each of those instances, DRVT has reminded legislators that currently the State is wanting to

[2] In re Proceeding for the Appointment of A Guardian for Leon Pursuant to SCPA Article 17A, 43 N.Y.S.3d 769 (N.Y. Surr. Ct. 2016); In re Zhuo, 53 Misc.3d 1121, 42 N.Y.S.3d 530, 2016 N.Y. Slip Op. 26309 (N.Y. Surr. Ct. 2016)

construct more and more locked facilities to put people with disabilities, rather than build up our community services, programs and supports, which is in direct conflict with the State's Olmstead obligations. Therefore, it is unclear to what extent the language contained in Section three would be enough to prevent unnecessary and unjustified reductions or denials of care, namely that the agency would only be able to do this when "the behavior or conditions causing the discharge cannot be mitigated or eliminated." Without anyone reviewing or calling these decisions into question, there will be no quality assurance as to why these decisions are being made, and yet these decisions have huge consequences for service recipients, whose lives really do matter just as much as the people providing for their care. A minor, but powerful compromise in these challenging situations seems to be to explicitly give an impacted individual the right to advocate for the level of care that they need.

DRVT has recently become aware of some conversations around revised language. DRVT is including that below and with its own recommendations underlined:

<u>The Home Health Agency shall make attempts to explore whether a risk can be mitigated or eliminated before making a determination about services to</u>

be provided or denied. Nothing in this provision should be construed to require a home health agency to enter a home to determine if a risk can be mitigated or eliminated if it is unsafe to do so.

The Home Health Agency shall provide reasonable notice of the denial of admission. The notice shall include the reason for the denial and information about how to submit a complaint pursuant to section 6308 of this chapter and in accordance with the rules adopted by the Department of Disabilities, Aging, and Independent Living pursuant to subsection 6303(a) of this chapter.

For individuals whose prior discharge was six months ago or more, those individuals shall be entitled to an evidentiary hearing pursuant to the hearing permissible for the first discharge from services.

Thank you.

Lindsey Owen