

APPROVAL # 121

Bill

CHAPTER 947

6.10 14 pp

LAWS OF 19 81

SENATE BILL 6864

ASSEMBLY BILL _____

6864

1981-1982 Regular Sessions

IN SENATE

June 9, 1981

Introduced by Sen. PAVAN—(at request of the Governor)—read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the mental hygiene law, the education law, the social services law, the executive law and the family court act, in relation to residential treatment facilities for children and youth

IN THE ASSEMBLY BY: A/C

Bill compared by _____ DATE RECEIVED BY GOVERNOR: 7/20/81

_____ ACTION MUST BE TAKEN BY: 7/31/81

_____ GOVERNOR'S ACTION:

_____ DATE 7/31/81

Memorandum No. _____

1981

SENATE

SENATE JOURNAL
 S-6864
 JUN 23 1981
 PAGE 49

The Senate Bill
 by Mr. PADAVAN
 Entitled: "

Calendar No. 1540

Senate No. 6864
 Assem. Rept. No. _____

6864

AN ACT to amend the mental hygiene law, the education law, the social services law, the executive law and the family court act, in relation to residential treatment facilities for children and youth

" was read the third time

The President put the question whether the Senate would agree to the final passage of said bill, the same having been printed and upon the desks of the members in its final form at least three calendar legislative days, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof and three-fifths being present, as follows:

AYE	Dist.		NAY	AYE	Dist.		NAY
	12	Mr. Ackerman			52	Mr. Kehoe	
	47	Mr. Anderson			15	Mr. Knorr	
	49	Mr. Auer			2	Mr. Lack	
	16	Mr. Babbush			1	Mr. LaValle	
	45	Mr. Barclay			29	Mr. Leichter	
	18	Mr. Bartosiewicz			8	Mr. Levy	
	23	Mr. Beatty			50	Mr. Lombardi	
	9	Mrs. Berman			24	Mr. Marchi	
	33	Mr. Bernstein			5	Mr. Marino	
	28	Mr. Bogues			19	Mr. Markowitz	
	41	Mr. Bruno			55	Mr. Masiello	
	7	Mr. Caemmerer	EXCUSED		21	Mr. Mega	
	34	Mr. Calandra			30	Mrs. Mendez	
	25	Mr. Connor			42	Mr. Nolan	
	48	Mr. Cook			27	Mr. Ohrenstein	
	60	Mr. Daly			17	Mr. Owens	
	46	Mr. Donovan			11	Mr. Padavan	EXCUSED
	6	Mr. Dunne			53	Mr. Perry	
	54	Mr. Eckert			36	Mr. Pisani	
	44	Mr. Farley			57	Mr. Present	
	59	Mr. Floss			39	Mr. Rolison	
	35	Mr. Flynn			31	Mr. Ruiz	
	32	Mr. Galiber			40	Mr. Schermerhorn	
	56	Mr. Gallagher			51	Mr. Smith	
	14	Mr. Gazzara			22	Mr. Solomon	
	13	Mr. Gold			43	Mr. Stafford	
	37	Mrs. Goodhue			3	Mr. Trunzo	
	26	Mr. Goodman			58	Mr. Volker	
	20	Mr. Halperin			10	Mr. Weinstein	
	4	Mr. Johnson			38	Mrs. Winikow	

AYES 58
 NAYS 0

Ordered, that the Secretary deliver said bill to the Assembly and request its concurrence therein.

1981

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AYES 58
 NAYS 0

Ordered, that the Secretary deliver said bill to the Assembly and request its concurrence therein.

BILL: 36364

R.R. NO: 1180 SPONSOR: PADAVAN--

AN ACT TO AMEND THE MENTAL HYGIENE LAW, THE EDUCATION LAW, THE SOCIAL SECURITY LAW, THE EXECUTIVE LAW AND THE FAMILY COURT ACT, IN RELATION TO RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN AND YOUTH

YEA ABRAMSON, E*	YEA HAWLEY, RS	YEA PILLITTERE, JT*
ABS BARBARO, FJ*	NAY HEALEY, PB	NAY PRESCOTT, DW
YEA BEHAN, JL	YEA HEVESI, AG*	NAY PROUD, G*
YEA BIANCHI, IN*	YEA HINCHEY, MD*	YEA RAPPLEYEA, CD
YEA BOYLAND, TS*	YEA HIRSCH, S*	YEA RATH, DE
NAY BRAGMAN, MJ*	YEA HOBLOCK, MJ	YEA REILLY, JM
YEA BRANCA, JR*	YEA HOCHBRUECKNER, GJ*	YEA RETTALIATA, AP
YEA BURROWS, GW	ABS HOWARD, LT	YEA RIFORD, LS
YEA BUSH, WE	EOR HOYT, WB*	YEA ROBACH, RJ*
YEA BUTLER, DJ*	YEA JACOBS, RS*	YEA ROBLES, VL*
YEA CASALE, AJ	NAY JENKINS, A*	YEA RUGGIERO, RS*
YEA CHESBRO, RT	YEA JOHNSON, CR*	YEA RYAN, AW
YEA COCHRANE, JC	YEA KEANE, RJ*	NAY SALAND, SM
YEA COHEN, DL*	YEA KELLEHER, NW	YEA SANDERS, S*
YEA CONNELLY, EA*	NAY KENNEDY, RL	YEA SCHIMMINGER, RL*
YEA CONNERS, RJ*	YEA KIDDER, RE*	ABS SCHMIDT, FD*
YEA COOKE, AT	YEA KISOR, RM	YEA SEARS, WR
ABS DAMATO, AP	YEA KOPPELL, GO*	NAY SEMINERIO, AS*
YEA DANDREA, RA	YEA KREMER, AJ*	YEA SERRANO, JE*
NAY DANIELS, GL*	YEA KUHL, JR	YEA SHAFFER, GS*
NAY DAVIS, G*	YEA LAFAYETTE, IC*	NAY SHEFFER, JB
YEA DEARIE, JC*	YEA LANE, CD	YEA SIEGEL, MA*
YEA DEL TORO, A*	NAY LARKIN, WJ	YEA SILVER, S*
ABS DICARLO, DL	NAY LASHER, HL*	NAY SIWEK, CA
NAY DUGAN, EC*	YEA LENTOL, JR*	NAY SKELOS, DG
YEA EMERY, JL	YEA LEVY, E	YEA SMOLER, H*
EOR ENGEL, EL*	YEA LEWIS, W*	YEA SPANO, NA
YEA ESPOSITO, JA	NAY LIPSCHUTZ, GE*	YEA STAVISKY, LP*
YEA EVE, AO*	NAY LOPRESTO, JG	ABS STEPHENS, WH
YEA FARRELL, HD*	NAY MACNEIL, HS	YEA STRANIERE, RA
NAY FELDMAN, D*	NAY MADISON, GH	YEA SULLIVAN, EC*
YEA FERRIS, J*	NAY MARCHISELLI, VA*	YEA SULLIVAN, FM
YEA FINNERAN, WB*	NAY MAZZA, GR	YEA SULLIVAN, PM
NAY FLACK, JT	YEA MCCABE, JW*	YEA TALLON, JR*
EOR FLANAGAN, JJ	YEA MILLER, HM	YEA TALOMIE, FG
NAY FORTUNE, TR*	YEA MILLER, MH*	YEA VANN, A*
YEA FOSSEL, JS	NAY MONTANO, A*	YEA VELELLA, GJ
NAY FRIEDMAN, G*	YEA MORAHAN, TP	YEA VIGGIANO, PM*
YEA GOLDSTEIN, R*	YEA MURPHY, MJ*	YEA WALSH, DB*
YEA GORSKI, DT*	YEA MURTAUGH, JB*	YEA WALSH, SP*
YEA GOTTFRIED, RN*	NAY NADLER, J*	YEA WARREN, GE
YEA GRABER, VJ*	YEA NAGLE, JF	YEA WEINSTEIN, HE*
YEA GRANNIS, A*	YEA NEWBURGER, MW*	YEA WENTLE, CC
YEA GREEN, RL*	YEA NINE, L*	YEA WEPKIN, S*
YEA GRIFFITH, E*	EOR NORTZ, HR	YEA WERTZ, RC
YEA HAGUE, JB	YEA ONEIL, JG	YEA WILSON, CE*
NAY HANNA, TA	YEA ORADIO, AF*	YEA WOOD, J*
NAY HANNON, K	NAY PAROLA, FE	YEA WYLLIAMS, J*
YEA HARENBERG, PE*	YEA PASSANNANTE, WF*	YEA ZIMMER, YN*
YEA HARRIS, GH	YEA PERONE, JM	YEA ZUCKER*

YEAS: 108

NAYS: 01

CONTROL: 65363036

CERTIFICATION: _____

LEGEND: YEA=YES, NAY=NO, NV=ABSTAIN, ABS=ABSENT, ELB=EXCUSED FOR LEGISLATIVE BUSINESS, EOR=EXCUSED FOR OTHER REASONS.



THE SENATE
STATE OF NEW YORK
ALBANY
12247

PLEASE RESPOND
ALBANY OFFICE:
 ROOM 803
LEGISLATIVE OFFICE BUILDING
ALBANY, NEW YORK 12247
(518) 455-3111
DISTRICT OFFICE
 224-50 BRADDOCK AVENUE
QUEENS VILLAGE, NEW YORK 11428
468-0316

FRANK PADAVAN
11TH DISTRICT
CHAIRMAN
COMMITTEE ON MENTAL HYGIENE
AND ADDICTION CONTROL

July 16, 1981

Hon. John T. McGoldrick
Counsel to the Governor
Executive Chamber
The Capitol
Albany, New York

Dear Mr. McGoldrick:

The bill which I introduced, Senate 6864, which amends several laws in relation to residential treatment facilities for children and youth has passed both Houses of the Legislature and is before the Governor awaiting his action.

This was part of the Governor's Program and is #143. I enclose supporting memoranda for your interest and respectfully request that the bill be signed into law.

Sincerely yours,

Frank Padavan

FP:pd
Enc.

GOVERNOR'S PROGRAM BILL

1981

M E M O R A N D U M

AN ACT to amend the mental hygiene law, the education law, the social services law, the executive law and the family court act, in relation to residential treatment facilities for children and youth

Purpose of the Bill:

The purpose of this bill is to provide a legal structure for establishment of residential inpatient psychiatric treatment facilities for children and youth under the age of twenty-one; admission of children into such facilities; education of children receiving care at such facilities; and payment for service provided at such facilities.

Summary of Provisions:

This bill amends a variety of provisions of the Mental Hygiene Law, the Education Law, the Social Services Law, the Executive Law and the Family Court Act in order to accomplish its purposes. These amendments are grouped by the law amended, beginning with the Mental Hygiene Law.

Sections 1 through 10 of the bill amend the Mental Hygiene Law. Section 1 amends section 1.03 of the Mental Hygiene Law by adding definitions of the terms "residential treatment facility for children and youth", "authorized agency" and "social services official". A "residential treatment facility for children and youth" is identified as an inpatient psychiatric facility which provides active treatment under the direction of a physician for individuals under twenty-one years of age which is operated in accordance with the regulations of the Commissioner of Mental Health. The State's children's psychiatric centers and non-State facilities specifically licensed as children's psychiatric hospitals are excepted from the definition of residential treatment facility for children and youth. Residential treatment facilities for children and youth are identified as a sub-class of the class of facilities meeting the definition of hospital found in the mental hygiene law.

The definitions of "authorized agency" and "social services official" are cross-references to definitions of those terms found in the Social Services Law.

Section 2 of the bill amends section 9.13 of the Mental Hygiene Law to enable social services officials or authorized agencies with care and custody of a child pursuant to the Social Services Law, the Director for Division for Youth, or a person or organization having custody of a child pursuant to an order issued under section 756 or 1055 of the Family Court Act, to apply for the voluntary admission of a child to a hospital operated or subject to licensure by the Office of Mental Health, including a residential treatment facility for children and youth. The section requires that applications for admission of a child to a residential treatment facility for children and youth be in accordance with the procedures described in section 9.51 of the Mental Hygiene Law, which is added by section 5 of this bill.

Sections 3 and 4 of the bill amend section 9.27 of the Mental Hygiene Law to enable social services officials or authorized agencies with care and custody of a child over the age of sixteen or a person or entity having custody of a child pursuant to an order of the family court pursuant to sections 756 or 1055 of the Family Court Act to apply for involuntary admission of such a child to a hospital, including a residential treatment facility for children and youth. Applications for admission of a child to a residential treatment facility for children and youth are required to be reviewed in accordance with the provisions of section 9.51 of the Mental Hygiene Law.

Section 5 of the bill adds a new section 9.51 to the Mental Hygiene Law. This section enables the director of a residential treatment facility for children and youth to receive as a patient any person in need of care and treatment in such a facility, provided that that person's need for admission is reviewed by a pre-admission certification committee designated by the Commissioner of Mental Health, the Commissioner of Social Services and the Commissioner of Education. This pre-admission certification committee will be required to evaluate each person proposed for admission or transfer to a residential treatment facility for children and youth in its geographic area. The committee must consist of clinical professionals licensed pursuant to the education law; at least one member of the committee must be a

physician. Local input into the committee's decision making process is assured by requirements that local governments be consulted by the commissioners prior to appointing members to the committee and a requirement that each committee designate a four-person advisory board, to represent interests of parents, voluntary agencies and other interested persons. This committee must, on the basis of a comprehensive assessment of the proposed admittee's psychiatric, medical and social needs certify that such individual is appropriate for admission into a residential treatment facility. Such certification may not be granted unless the committee finds that ambulatory care resources and residential alternatives available in the community do not meet the treatment needs of the individual; proper treatment of the individual's psychiatric condition requires inpatient care and treatment under the direction of a physician; and care and treatment in a residential treatment facility can reasonably be expected to improve the individual's condition or prevent further regression so that services will no longer be needed. The committee must evaluate the immediacy of each individual's need for care in an RTF, relative to the need of other children whose need has been evaluated by the committee.

The pre-admission certification process described above is designed to comply with regulations of the federal Department of Health and Human Services which demand an independent review of the need of a child for inpatient psychiatric facility services as a condition precedent to federal financial participation in the cost of medical assistance to eligible children. The composition of the committee and the criteria to be applied by the committee in making certification decisions are derived from federal regulations. See 42 CFR 441.153.

Residential treatment facilities for children and youth are prohibited from admitting children whose need for such services has not been certified by a pre-admissions certification committee. Section 367-a of the Social Services Law, amended by section 25 of the bill, specifically prohibits the payment of medicaid benefits to a residential treatment facility on behalf of the child whose need for services has not been appropriately certified.

Residential treatment facilities for children and youth are prohibited from admitting children who have a mental illness which presents a likelihood of serious physical harm to others.

Section 9.51 allows the transfer of children admitted as inpatients to hospitals operated by the Office of Mental Health upon application of the Director of the Division for Youth or upon order of a family court issued pursuant to section 760 of the Family Court Act to a residential treatment facility for children and youth, if service in such a facility would be more appropriate to the child's needs. Transfer of children who are subject to a restrictive placement pursuant to section 753-a of the Family Court Act and those sentenced as juvenile offenders pursuant to section 70.05 of the Criminal Procedure Law is not authorized.

Subdivision (g) of section 9.51 protects the confidentiality of clinical records of persons admitted to residential treatment facilities for children and youth. Pre-admission certification committees are granted access to such clinical information as may be necessary to enable them to conduct adequate evaluations of the child's needs. Such information must be kept confidential as required by section 33.13 of the Mental Hygiene Law. Clinical records maintained by an RTF which is operated by an authorized agency are not considered part of the client record. Social Services Law section 372 requires such an agency to maintain and are not discoverable in a proceeding under sections 358-a or 392 of the Social Services Law except upon order of the family court. Social services officials are granted access to portions of the clinical record to the extent necessary to fulfill their obligations under the Social Services Law.

Note that the due process protections afforded to persons admitted to hospitals in accordance with Article 9 of the Mental Hygiene Law would be available to persons admitted to residential treatment facilities for children and youth.

Section 6 of this bill adds a new section 9.53 to the Mental Hygiene Law. This section specifically states that admission of a child in the care and custody of a social services official or authorized agency, the Director of the Division for Youth or a person or entity granted custody of the child pursuant to sections 756 or 1055 of the Family Court Act, to a hospital or residential treatment facility for children and youth does not effect a change in the custody of such child or relieve a person or organization having such custody from responsibilities described in the Social Services Law, the Executive Law or the Family Court Act. This provision is intended to assure that periodic

review of the status of a child required under section 392 of the Social Services Law and section 760 of the Family Court Act takes place as required. This section requires that at the time of release of a child so admitted, the child will be returned to the public agency, person or entity with custody of the child pursuant to an outstanding court order.

Sections 7 and 8 of the bill amend provisions of Article 31 of the Mental Hygiene Law relating to regulation of residential treatment facilities for children and youth. Section 8 adds a new section 31.26 to the Mental Hygiene Law, which includes specific provisions relating to the regulation of such facilities. This section requires the Commissioner of Mental Health and the Commissioner of Social Services to enter into a cooperative agreement to govern the operation of residential treatment facilities for children and youth by an authorized agency which is subject to the regulatory jurisdiction of the Department of Social Services. This section further requires the Office of Mental Health, the Department of Social Services and the Department of Education to establish a uniform system by which authorized agencies which operate RTFs and, when appropriate, private schools or special act school districts will report the cost of their operations.

Section 31.26 requires the Office of Mental Health and the Department of Social Services to jointly publish regulations governing the operation of pre-admission certification committees. This section also requires, as a condition of licensure, that RTFs admit patients in accordance with priorities of need set by the pre-admission certification committee serving the facility.

Section 9 of the bill amends section 41.34 of the Mental Hygiene Law to make it plain that residential treatment facilities housing between four and fourteen persons will be subject to the site selection process described in that section.

Section 10 of the bill adds a new section 43.02 to the Mental Hygiene Law to enable the Commissioner of Mental Health to set rates of payment by government agencies for services at facilities subject to the licensure of the Office of Mental Health, subject to the approval of the Director of the Division of the Budget. These amendments specifically give the Commissioner of Mental Health rate

setting authority governing payments under the medicaid program.

Section 11 through 21 of the bill amend the Education Law. These amendments govern the evaluation of the educational needs of children placed in residential facilities for children and youth and assignment of financial responsibility for the cost of educational services to those children. The amendments are to Article 81 of the Education Law, which was added by Chapter 563 of the Laws of 1980. Upon application for admission of a child into a residential treatment facility for children and youth who has not already been evaluated and recommended for such placement by the appropriate committee on the handicapped, the child is to be referred by the pre-admissions certification committee reviewing his or her need for care and treatment in an RTF to the committee on the handicapped of the school district in which the child resides. That committee on the handicapped is required to evaluate the educational needs of the child and report its recommendations to the pre-admission certification committee. The child may be placed in a variety of educational settings, ranging from the school district in which the residential treatment facility is located to a private school or special act school district operated by a child care institution of which the residential treatment facility for children and youth is a part. The Commissioners of Education, Social Services and Mental Health are required to enter an interagency agreement to govern the establishment of reimbursement methodologies for tuition, maintenance and medical care of children residing at residential treatment facilities. The Commissioner of Education is required to establish a rate for tuition for service provided to such a child at a private school or special act school district operated by the residential treatment facility or an authorized agency of which such facility is a part. The social services district with financial responsibility for such child is required to pay to the RTF the rate established for tuition for a child served in a private school or special act school district operated by the RTF or an authorized agency of which the RTF is a part. The social services district with financial responsibility for the child is required to pay to the school district, BOCES, private school or other facility providing educational services to a child residing in a RTF, the tuition rate for such services established by the Commissioner of Education pursuant to other provisions of the Education Law. The school district with financial

responsibility for a child receiving care in an RTF who is determined by the appropriate committee on the handicapped to have a "handicapping condition" is responsible for the school district basic contribution towards the education of such child identified pursuant to Article 89 of the Education Law.

Sections 22 through 27 of the bill amend the Social Services Law. Section 22 complements the amendments to the Education Law by requiring that the State reimburse a social services district with financial responsibility for tuition expenses for a child placed in a residential treatment facility by his or her parent or guardian rather than by a social services district, the Division for Youth or the Family Court for 100% of the education costs by the social services district on behalf of such child.

Section 23 of the bill creates in the Social Services Law a cross-reference to the definition of residential treatment facility for children and youth added to the Mental Hygiene Law by section 1 of this bill.

Sections 24 and 25 amend the Social Services Law in a manner which complements section 43.02 of the Mental Hygiene Law, added in section 10 of the bill. These amendments state that the Office of Mental Health will enter a cooperative agreement with the Department of Social Services and the Department of Health to enable the Office of Mental Health to administer and supervise medical care, health care, habilitative, rehabilitative and maintenance services for which medical assistance is paid pursuant to Title XIX of the federal Social Security Act and the Social Services Law for services in residential treatment facilities for children and youth subject to the licensure of the Office of Mental Health.

Section 26 complements the provisions of section 9.51 of the Mental Hygiene Law, added by section 5 of the bill, by prohibiting medicaid and other government payments for RTF service to a child whose need for such service was not certified as required in section 9.51.

Section 27 of the bill amends section 400 of the Social Services Law to make it plain that a social services official with care and custody of an abandoned, neglected or abused child, who arranges the placement of such a child into an authorized agency which in turn applies for the

admission of the child into a residential treatment facility for children and youth, may not remove the child from such facility, except with the approval of the medical director of the facility. This amendment is made to prevent misinterpretation of the law and to assure that the clinical staff of a hospital treating a child in the care and custody of a social services official has the opportunity to apply for the involuntary retention of such a child in the event a social services official demands the removal of the child from the facility and the clinical staff considers such removal to be contrary to the medical needs of the child. Section 28 of the bill amends section 384-a to state that involuntary retention of a child as contemplated by section 400 of the Social Services Law, which precludes return of the child on request of a parent effectively returns care and custody of the child to the parent or guardian.

Sections 29, 30 and 31 of the bill amend section 517 of the Executive Law. Section 517 governs the process for application by the Director of the Division for Youth for admission of a child in his care and custody to a hospital operated by the Office of Mental Health. Sections 29 and 30 of the bill make technical amendments without substantive effect. Section 31 of the bill complements the amendments to sections 9.13 and 9.27 of the Mental Hygiene Law incorporated in sections 2 and 3 of the bill. These amendments clarify the circumstances under which the Director of the Division for Youth can apply for the voluntary or involuntary admission of a child in his custody to a hospital operated by the Office of Mental Health or a residential treatment facility for children and youth. The amendments do not authorize the admission to an RTF of a child who has been found to be a juvenile offender or is subject to a restrictive placement pursuant to section 753-a of the Family Court Act.

Section 32 of the bill amends section 760 of the Family Court Act. These amendments would enable a Family Court Judge, when issuing an order pursuant to section 760, with the consent of the Commissioner, to place a child in the custody of a Commissioner of Social Services as an alternative to placing the child in the custody of the Division for Youth. This amendment would leave intact provisions of section 760 which enable a family court judge to order the placement of a child against whom a juvenile delinquency proceeding has been brought into a hospital operated by the Office of Mental Health. They would allow, however, for the

transfer of a child received by such a hospital to a residential treatment facility for children and youth when care in such a facility would be more appropriate to the child's needs. Such a transfer is not authorized for children who are subject to a restrictive placement after having been found to have committed a designated felony or who has been sentenced as a juvenile offender.

Statement in Support:

It is roughly estimated that there are between 800 and 1,000 mentally ill children and adolescents in New York State who require active inpatient psychiatric treatment on a continuous basis in a setting other than a children's psychiatric hospital.

Children requiring care in residential treatment facilities for children and youth established pursuant to this bill reside in a variety of settings. It is estimated that approximately 75 children have been placed in institutions outside the State of New York who could be returned to New York upon establishment of RTF services for them. It is estimated that at least 200 individuals in child care institutions subject to the regulatory jurisdiction of the Department of Social Services would be better served in residential treatment facilities for children and youth. There are at least 50 children in the custody of the Division for Youth who have been estimated to require a level of care similar to that which would be provided in a residential treatment facility for children and youth. In addition, there are children in private schools subject to the jurisdiction of the Department of Education who would benefit from such services and children receiving care in children's psychiatric centers who would be better served in residential treatment facilities for children and youth.

The standards established in the bill for residential treatment facilities for children and youth and the process for certification of the need for service in an RTF and the standards used in making such certification are written in such a way as to meet the requirements of federal law and regulations governing inpatient psychiatric facilities for individuals under the age of twenty-one, so federal financial participation will be available for the care, maintenance and treatment components of services provided to children served in such facilities.

Establishment of residential treatment facilities will make it possible for the Office of Mental Health to use beds at children's psychiatric centers to provide intensive treatment to children who, as a result of mental illness, require either acute stabilization and treatment or continued treatment in a protective environment due to their being either critically unmanageable or imminently dangerous to themselves or others. This should reduce the length of stay for most of the patients in such hospitals. Residential treatment facilities will provide longer term care to children who require active treatment in a supportive setting but do not require the protective environment provided by children's psychiatric centers.

This proposal will make it possible to establish facilities necessary to provide appropriate treatment to hundreds of children who now are unserved, underserved or are unnecessarily treated in highly restrictive settings.

9. Budget Implications:

The care and treatment of children at residential treatment facilities for children and youth will be almost exclusively funded under the medical assistance program. Since these children can be expected to live away from their homes for extended periods of time, they will not be considered to share the common household of their parents or guardians and the income of their parent or guardian will not be deemed available to them. Thus, in accordance with section 366(2)(b) of the Social Services Law, they will be considered independent households and will most likely be income eligible for participation in the medical assistance program.

Calculation of the fiscal impact of the development of 500 residential treatment facility beds during the 1981-82 fiscal year is based on the transfer of much of the target population from ADC funding to medicaid funded programs. While the Department of Social Services estimates that approximately 45% of the target population is eligible for the federal ADC program, it is estimated that close to 100% of the individuals served in RTFs will be eligible for medicaid funding. Therefore, federal financial participation will increase dramatically.

At present the cost for care, maintenance and treatment of approximately 475 children who might be transferred to

residential treatment facilities totals approximately \$17.63 million. Of that total, the federal government pays \$6.36 million, the State \$8.13 million and local governments \$3.14 million.

Estimating a medicaid rate of approximately \$120 per day per child for care in RTFs, the total cost of care for the 475 children identified above plus 25 children now unserved, will be \$21.90 million of which the federal government will pay \$10.95 million, and, presuming State takeover of local medicaid costs, the State will pay \$10.95 million. The net result is increased cost to the State of approximately \$3 million. If the local share of medicaid for this population is not eliminated, the cost to the State will be decreased by \$2.65 million and the cost to local governments will be increased by \$2.34 million.

KA

STATE OF NEW YORK
EXECUTIVE CHAMBER

MEMORANDUM



J-6864

JUL 22 RECD

To: Honorable John G. McGoldrick

From: Jeffrey Sachs *JS*

July 21, 1981

Subject: S. 6864

RE: AN ACT to amend the mental hygiene law, the education law, the social services law, the executive law and the family court act, in relation to residential treatment facilities for children and youth

The Governor's Program Office supports this bill.

cc: Mr Feig
Mr. McAnaney



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

JUL 31 1981

MEMORANDUM filed with Senate Bill Number 6864, entitled:

CHAPTER 947

"AN ACT to amend the mental hygiene law, the education law, the social services law, the executive law and the family court act, in relation to residential treatment facilities for children and youth"

APPROVAL #121

A P P R O V E D

The bill amends the Mental Hygiene Law, the Education Law, the Social Services Law, the Executive Law and the Family Court Act to establish a new class of psychiatric facilities to be known as residential treatment facilities for children and youth. The facilities will provide longer term care and treatment than is presently available in children's psychiatric hospitals and permit the Office of Mental Health to use the beds in the children's psychiatric hospitals for the treatment and stabilization of persons with acute or dangerous conditions.

The establishment of this new class of mental health facilities will fill a void in the current mental hygiene service network. It is estimated that between 800 to 1,000 mentally ill youths require the type of services that will be available in residential treatment facilities. Some of these persons are now receiving treatment at out-of-state institutions; most, however, are receiving no treatment or inappropriate treatment.

Among those recommending approval are the Office of Mental Health, Department of Social Services, Division of the Budget, Council on Children and Families, Office of Mental Retardation and Developmental Disabilities, State Health Planning Commission, Advocate for the Disabled, State Commission on Quality of Care for the Mentally Disabled, Federation of Jewish Philanthropies and the New York State Council of Voluntary Child Care Agencies.

The bill is approved.

SENATE

Introduced by:

ASSEMBLY

No. 6864

Sen. Padavan

No.

Law: Mental Hygiene Law, Education Law, Social Services Law, the Executive Law and the Family Court Act

Sections:

JUL 21 RECD

Division of the Budget recommendation on the above bill:

Approve: XXX Veto: _____ No Objection: _____ No Recommendation: _____

1. Subject and Purpose: The purpose of this bill is to codify the establishment of residential inpatient psychiatric treatment facilities for children and youth under the age of twenty-one; the admission of children into such facilities; the education of children receiving care at such facilities; and the payment for service provided at such facilities.
2. Summary of Provisions: Effective July 1, 1981, this bill amends a variety of provisions of the Mental Hygiene Law, the Education Law, the Social Services Law, the Executive Law and the Family Court Act. These amendments are grouped by the law amended, beginning with the Mental Hygiene Law.

Sections 1 through 10 of the bill amend the Mental Hygiene Law. Section 1 amends Section 1.03 of the Mental Hygiene Law by adding definitions of the terms "residential treatment facility for children and youth", "authorized agency" and "social services official". A "residential treatment facility for children and youth" is identified as an inpatient psychiatric facility which provides active treatment under the direction of a physician for individuals under twenty-one years of age which is operated in accordance with the regulations of the Commissioner of Mental Health. The State's children's psychiatric centers and non-State facilities specifically licensed as children's psychiatric hospitals are excepted from the definition of residential treatment facility for children and youth. Residential treatment facilities for children and youth are identified as sub-class of the class of facilities meeting the definition of hospital found in the Mental Hygiene Law.

The definitions of "authorized agency" and "social services official" are cross-references to definitions of those terms found in the Social Services Law.

Section 2 of the bill amends Section 9.13 of the Mental Hygiene Law to enable social services officials or authorized agencies with care and custody of a child pursuant to the Social Services Law, the Director for Division of Youth, or a person or organization having custody of a child pursuant to an order issued under section 756 or 1055 of the Family Court Act, to apply for the voluntary admission of a child to a hospital operated or subject to licensure by the Office of Mental Health, including a residential treatment facility for children and youth.

Date: _____ Examiner: _____

Disposition:

Chapter No.

Veto No.

Sections 3 and 4 of the bill amend Section 9.27 of the Mental Hygiene Law to enable social services officials or authorized agencies with care and custody of a child over the age of sixteen or a person or entity having custody of a child pursuant to an order of the family court pursuant to sections 756 or 1055 of the Family Court Act to apply for involuntary admission of such a child to a hospital, including a residential treatment facility for children and youth.

Section 5 of the bill adds a new section 9.51 to the Mental Hygiene Law. This section enables the director of a residential treatment facility for children and youth to receive as a patient any person in need of care and treatment in such a facility, provided that that person's need for admission is reviewed by a pre-admission certification committee designated by the Commissioner of Mental Health, the Commissioner of Social Services and the Commissioner of Education. This pre-admission certification committee will be required to evaluate each person proposed for admission or transfer to a residential treatment facility for children and youth in its geographic area.

The composition of the committee and certain terms for admission are prescribed.

In addition, each pre-admission certification committee will be required to appoint local representatives to advisory boards.

This section further states that residential treatment facilities for children and youth are prohibited from admitting children whose need for such services has not been certified by a pre-admissions certification committee.

Section 9.51 also allows the transfer of children admitted as inpatients to hospitals operated by the Office of Mental Health upon application of the Director of the Division for Youth or upon order of a family court issued pursuant to Section 760 of the Family Court Act to a residential treatment facility for children and youth.

Section 6 of this bill adds a new Section 9.53 to the Mental Hygiene Law dealing with the custody of children admitted to residential treatment facilities.

Sections 7 and 8 of the bill amend provisions of Article 31 of the Mental Hygiene Law relating to regulation of residential treatment facilities for children and youth. Section 8 adds a new section 31.26 to the Mental Hygiene Law, which includes specific provisions relating to the regulation of such facilities. This section requires the Commissioner of Mental Health and the Commissioner of Social Services to enter into a cooperative agreement to govern the operation of residential treatment facilities for children and youth by an authorized agency which is subject to the regulatory jurisdiction of the Department of Social Services. The Office of Mental Health, the Department of Social Services and the Department of Education are required to establish a uniform system by which authorized agencies which operate RTFs and, when appropriate, private schools or special act school districts will report the cost of their operations.

Section 31.26 further requires the Office of Mental Health and the Department of Social Services to jointly publish regulations governing the operation of pre-admission certification committees. As a condition of licensure, RTFs are required to admit patients in accordance with priorities of need set by the pre-admission certification committee serving the facility.

Section 9 of the bill amends Section 41.34 of the Mental Hygiene Law in order to include residential treatment facilities having less than 14 beds within the class of community residential facility.

Section 10 of the bill adds a new Section 43.02 to the Mental Hygiene Law to enable the Commissioner of Mental Health to set rates of payment by government agencies for services at facilities subject to the licensure of the Office of Mental Health, subject to the approval of the Director of the Division of the Budget. These amendments specifically give the Commissioner of Mental Health rate setting authority governing payments under the Medicaid program.

Section 11 through 21 of the bill amend the Education Law. These amendments govern the evaluation of the educational needs of children placed in residential facilities for children and youth and assignment of financial responsibility for the cost of educational services to those children. The amendments are to Article 81 of the Education Law, which was added by Chapter 563 of the Laws of 1980.

Sections 22 through 28 of the bill amend the Social Services Law. Section 22 complements the amendments to the Education Law by requiring that the State reimburse a social services district with financial responsibility for tuition expenses for a child placed in a residential treatment facility by his or her parent or guardian rather than by a social services district, the Division for Youth or the Family Court for 100% of the education costs by the social services district on behalf of such child.

Section 23 of the bill creates in the Social Services Law a cross-reference to the definition of residential treatment facility for children and youth added to the Mental Hygiene Law by section 1 of this bill.

Sections 24 and 25 amend the Social Services Law in a manner which complements Section 43.02 of the Mental Hygiene Law, added in section 9 of the bill. These amendments state that the Office of Mental Health will enter a cooperative agreement with the Department of Social Services and the Department of Health to enable the Office of Mental Health to administer and supervise medical care, health care, habilitative, rehabilitative and maintenance services for which medical assistance is paid pursuant to Title XIX of the Federal Social Security Act and the Social Services Law for services in residential treatment facilities for children and youth subject to the licensure of the Office of Mental Health.

Section 26 complements the provisions of Section 9.51 of the Mental Hygiene Law, added by Section 5 of the bill, by prohibiting Medicaid and other government payments for RTF service to a child whose need for such service was not certified as required in section 9.51.

Section 27 of the bill amends section 400 of the Social Services Law to prohibit a social services official with care and custody of an abandoned, neglected or abused child, who arranges the placement of such a child into an authorized agency which in turn applies for the admission of the child into a residential treatment facility for children and youth, from removing the child from the RTF without the approval of the medical director of the facility.

Section 28 amends section 384-a of such law by adding a new paragraph (d) dealing with return of care and custody to the parents or guardian of a child placed in an RTF.

Sections 29, 30 and 31 of the bill amend Section 517 of the Executive Law. Section 517 governs the process for application by the Director of the Division for Youth for admission of a child in his care and custody to a hospital operated by the Office of Mental Health. Sections 28 and 29 of the bill make technical amendments without substantive effect. Section 30 of the bill complements the amendments to Sections 9.13 and 9.27 of the Mental Hygiene Law incorporated in Sections 2 and 3 of the bill. These amendments clarify the circumstances under which the Director of the Division for Youth can apply for the voluntary or involuntary admission of a child in his custody to a hospital operated by the Office of Mental Health or a residential treatment facility for children and youth. The amendments do not authorize the admission to an RTF of a child who has been found to be a juvenile offender or is subject to a restrictive placement pursuant to Section 753-a of the Family Court Act.

Section 32 of the bill amends Section 760 of the Family Court Act. These amendments would enable a Family Court Judge, when issuing an order pursuant to section 760, with the consent of the Commissioner, to place a child in the custody of a Commissioner of Social Services as an alternative to placing the child in the custody of the Division for Youth. This amendment would leave intact provisions of section 760 which enable a family court judge to order the placement of a child against whom a juvenile delinquency proceeding has been brought into a hospital operated by the Office of Mental Health. It would allow, however, for the transfer of a child received by such a hospital to a residential treatment facility for children and youth when care in such a facility would be more appropriate to the child's needs. Such a transfer is not authorized for children who are subject to a restrictive placement after having been found to have committed a designated felony or who has been sentenced as a juvenile offender.

3. Legislative History: None Known

4. Arguments in Support:

- a. It is estimated that between 800 and 1,000 mentally ill children and youth in New York State require active inpatient psychiatric treatment on a continuous basis in a setting which is less restrictive than a children's psychiatric hospital.
- b. Establishment of RTFs will allow the Office of Mental Health to utilize their CPC beds to provide intensive treatment to children in need of acute psychiatric treatment or for those children who are either critically unmanageable or dangerous to themselves or others.
- c. These facilities will provide an appropriate treatment level for many children who are currently placed out of State or who are unserved.
- d. The standards established in this bill merit the requirements of Federal law and will enable the RTF to obtain Federal financial participation for the care, maintenance and treatment components provided at such facilities.

5. Possible Objections:

- a. It could be argued that this proposal may slightly increase local financial contributions if the State does not take over the local share of Medicaid.
- b. It could be argued that the sections of the bill mandating advisory panels for each pre-certification committee may make the admission process unwieldy.

6. Other State Agencies Interested:

The Office of Mental Health supports this legislation. The Division for Youth supports this legislation. The Education Department supports this legislation. The Department of Social Services supports this legislation. The Health Department position is unknown.

7. Other Interested Groups:

Local governmental units, local social services commissioners, local mental hygiene directors, and voluntary child care agencies.

8. Budget Implications:

During the 1981-82 fiscal year the resources associated with this proposal amounted to \$3,644,800. This amount was provided in the 1981-82 budget and funds the State share of care, treatment and education costs. In addition, \$650,000 in program development grant funds was provided.

Long term budget implications point to a gross cost of approximately \$23,000,000 for care, treatment and education. This represents a State share of approximately \$6,900,000 and a local share of \$6,900,000.

Due to higher patient eligibility for Medicaid funding versus A.D.C. funding the increased cost to local governments is insignificant. The small increase to localities, which is projected to be approximately \$700,000, is due to repatriation of out of State children and to the cost of providing services to 25-50 previously unserved children.

9. Recommendation: Approve. This bill would establish a new class of children's psychiatric facility which would fill a gap in the continuum of mental health services for children.

7/17/81



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56864

TO COUNSEL TO THE GOVERNOR

RE: SENATE 6864
~~ASSEMBLY~~

JUL 20 1981

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Inasmuch as this bill does not appear to relate to the functions of the Department of Law, I am not commenting thereon, at this time. However, if there is a particular aspect of the bill upon which you wish comment, please advise me.

ROBERT ABRAMS
Attorney General

Dated: JUL 16 1981

NEW YORK STATE EXECUTIVE DEPARTMENT
DIVISION FOR YOUTH
84 HOLLAND AVENUE
ALBANY, NEW YORK 12208

5-6864



FRANK A. HALL
DIRECTOR

JUL 21 REC'D

MEMORANDUM IN SUPPORT

July 20, 1981

SENATE NO. : S-6864 Senator Padavan

TITLE: AN ACT to amend the mental hygiene law, the education law, the social services law, the executive law and the family court act, in relation to residential treatment facilities for children and youth

REASONS FOR
SUPPORT:

The bill makes eligible for admission to these facilities persons in need of supervision and juvenile delinquents placed with the Division for Youth. Juvenile offenders sentenced to a term of imprisonment for confinement at a secure facility of the Division and juvenile delinquents restrictively placed with the Division pursuant to Section 753-a of the Family Court Act are ineligible for admission. The exclusion of juvenile offenders who are technically convicted persons from facilities which will house civilly committed persons is deemed necessary by the Office of Mental Health. We do not concur with that view and recommend that juvenile offenders should be considered for admission. The excepting of restrictive placements is more arbitrary since these placements are clearly civil commitments. It is our position that each application for admission to an RTF, including those for juvenile offenders and restrictive placements, should be evaluated by the standard enunciated beginning on Line 54 of Page 4 of the bill continuing through Line 4, Page 5:

(f) No person shall be admitted to a residential treatment facility for children and youth who has a mental illness which presents a likelihood of serious harm to others, "likelihood of serious harm" shall mean a substantial risk of physical harm to other persons as manifested by recent homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

The application of this standard will enable a juvenile offender or restrictive placement who has served a substantial portion of his sentence or placement to be eligible if there are no recent indications of the likelihood of serious harm.

As technical points, the apparent typographical errors indicated above in Lines 2 and 4, the words harm

and reasonable, should be corrected and Section 5 of the bill (subdivision b, line 5, page 3) should add juvenile offenders to conform with Section 31, subdivision 7 of the bill.

Although the bill does not provide eligibility for the indicated Division for Youth clients described above, it will provide a treatment resource for other Division for Youth placements and, therefore, should be enacted.

DNG:cmh

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NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

10 NORTH PEARL STREET, ALBANY, NEW YORK 12243

BARBARA B. BLUM
Commissioner

S-6864



JUL 28 1981

July 28, 1981

JUL 28 1981

RE: Ten Day Bill
Senate 6864

Dear Mr. McGoldrick:

Your office has requested this Department's comments on the above-referenced bill, which is before the Governor for signature.

Enclosed is the Department's memorandum recommending approval of this bill.

Sincerely,

Barbara B. Blum

Enclosure

Honorable John G. McGoldrick
Counsel to the Governor
Executive Chamber
The Capitol
Albany, New York 12224



J-6864

COUNSEL

STATE OF NEW YORK
COMMISSION ON QUALITY OF CARE
FOR THE MENTALLY DISABLED
99 WASHINGTON AVENUE, SUITE 730
ALBANY, NEW YORK 12210

JUL 21 REC'D

July 20, 1981

PAUL F. STAVIS
COUNSEL

Jan K. Myers
~~XXXXXXXXXX~~
ASSISTANT COUNSEL

Honorable John G. McGoldrick
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

Re: Senate Bill 6864

Dear Mr. McGoldrick:

Thank you for referring this bill to the Commission for our consideration and comment. On behalf of the Commission, this is to inform you that we support the instant legislative proposal and recommend its approval by the Governor.

I would respectfully like to point out a typographical error in the printing of the above bill, located on page 5, line 2, the 6th word: the "m" was left off the word "harm."

I will be happy to provide further analysis or information upon request.

Sincerely yours,

Paul F. Stavis
Counsel

A-6864



STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND
DEVELOPMENTAL DISABILITIES
COUNSEL

HARRIE C. PATRICK
DEPUTY GENERAL COUNSEL

JAMES E. INTRONE
COMMISSIONER

44 HOLLAND AVENUE
ALBANY, NEW YORK 12229
(518) 474-1331

July 15, 1981

JUL 17 1981

Hon. John G. McGoldrick
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: S. 6864 (Sen. Padavan)

AN ACT to amend the mental hygiene law,
the education law, the social services
law, the executive law and the family
court act, in relation to residential
treatment facilities for children and
youth

Dear Mr. McGoldrick:

The Office of Mental Retardation and Developmental
Disabilities supports the above-referenced bill which
was introduced at the request of the Office of Mental
Health. This bill would define the term residential
treatment facility for children and youth and make it
possible to establish such facilities necessary to
provide appropriate treatment to hundreds of children
who are unserved, underserved or are unnecessarily
treated in highly restrictive settings.

Sincerely,

HARRIE C. PATRICK
Deputy General Counsel

HCP:sb



56864

JAMES A. PREVOST, M.D.
COMMISSIONER

STATE OF NEW YORK
OFFICE OF MENTAL HEALTH
COUNSEL

PAUL LITWAK
DEPUTY COMMISSIONER
AND COUNSEL

44 HOLLAND AVENUE
ALBANY, NEW YORK 12220
(518) 474-1331

July 14, 1981

JUL 15 1981

Hon. John G. McGoldrick
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York

Re: S. 6864 (Senator Padavan)

AN ACT to amend the mental hygiene law, the education law, the social services law, the executive law, the family court act, in relation to residential treatment facilities for children and youth

Dear Mr. McGoldrick:

The Office of Mental Health supports the above-referenced bill which was introduced at the request of this office and which is before the Governor for executive action.

It is roughly estimated that there are between 800 and 1,000 mentally ill children and adolescents in New York State who require active inpatient psychiatric treatment on a continuous basis in a setting other than a children's psychiatric hospital.

Children requiring care in residential treatment facilities for children and youth established pursuant to this bill reside in a variety of settings. It is estimated that approximately 75 children have been placed in institutions outside the State of New York who could be returned to New York upon establishment of RTF services for them. It is estimated that at least 200 individuals in child care institutions subject to the regulatory jurisdiction of the Department of Social Services would be better served in residential treatment facilities for children and youth. There are at least 50 children in the custody of the Division for Youth who have been estimated to require a

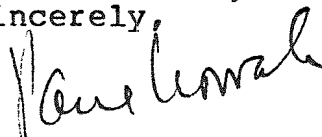
level of care similar to that which would be provided in a residential treatment facility for children and youth. In addition, there are children in private schools subject to the jurisdiction of the Department of Education who would benefit from such services and children receiving care in children's psychiatric centers who would be better served in residential treatment facilities for children and youth.

The standards established in the bill for residential treatment facilities for children and youth and the process for certification of the need for service in an RTF and the standards used in making such certification are written in such a way as to meet the requirements of federal law and regulations governing inpatient psychiatric facilities for individuals under the age of twenty-one, so federal financial participation will be available for the care, maintenance and treatment components of services provided to children served in such facilities.

Establishment of residential treatment facilities will make it possible for the Office of Mental Health to use beds at children's psychiatric centers to provide intensive treatment to children who, as a result of mental illness, require either acute stabilization and treatment or continued treatment in a protective environment due to their being either critically unmanageable or imminently dangerous to themselves or others. This should reduce the length of stay for most of the patients in such hospitals. Residential treatment facilities will provide longer term care to children who require active treatment in a supportive setting but do not require the protective environment provided by children's psychiatric centers.

This proposal will make it possible to establish facilities necessary to provide appropriate treatment to hundreds of children who now are unserved, underserved or are unnecessarily treated in highly restrictive settings.

Sincerely,



PAUL LITWAK

PL:sb

S-6864



State of New York
Council on Children and Families
Tower Building - 28th Floor
Empire State Plaza
Albany, New York 12223

JUL 20 RECD

Ilene Margolin
Executive Director
(518) 474-8038

July 17, 1981

Re: S. 6864

Dear Mr. McGoldrick:

Your office has requested the Council on Children and Families' comments on the above-referenced bill, which is before the Governor for signature.

Enclosed is the Council's memorandum recommending approval of this bill.

Sincerely,

Ilene Margolin

Honorable John G. McGoldrick
Executive Chamber
State Capitol
Albany, New York 12224

Enc.

MEMORANDUM ACCOMPANYING COMMENTS ON
BILLS BEFORE THE GOVERNOR FOR EXECUTIVE ACTION
NYS COUNCIL ON CHILDREN AND FAMILIES

SENATE

6864

RECOMMENDATION: Approval.

STATUTES INVOLVED: Mental Hygiene Law, Education Law, Social Services Law, Executive Law and Family Court Act.

EFFECTIVE DATE: July 1, 1981.

DISCUSSION:

1. Purpose of the bill: This bill would authorize the licensure of residential treatment facilities for children by the Office of Mental Health.
2. Summary of provisions:
 - a) Section 1.03 of the mental hygiene law is amended to define residential treatment facilities for children and youth, authorized agency and social services official. Such residential treatment facility is to be considered a type of hospital.
 - b) Section 9.13 of such law is amended to enables social services officials, authorized agencies, the division for youth or other persons having custody of a child pursuant to an order of the Family Court to apply for voluntary admission for a child to a hospital-operated or licensed by the Office of Mental Health (including residential treatment facilities for children and youth).
 - c) Sections three and four of the bill enable social services officials, authorized agencies or other persons or entities with custody of children pursuant to a family court order to apply for involuntary admission of children to mental health facilities (including residential treatment facilities for children).
 - d) A new Section 9.51 is added to the Mental Hygiene Law. This section enables the director of a residential treatment facility for children and youth to admit any person in need of treatment in such a facility. However, the need for admission in each case must be certified by a pre-admission certification committee. The committee is comprised of designees of the Commissioner of Mental Health, Education and Social Services, and all persons must be either a physician, nurse, psychologist or licensed social worker. Children may not be admitted if they have not been certified by this committee. Transfer of children admitted to state-operated facilities who are in the custody of the Division for Youth to residential treatment facilities is also authorized.

This section also grants confidentiality to the records of a residential treatment facility but allows social services officials access to clinical records to the extent necessary to fulfill their obligations under the Social Services Law. It should also be noted that the due process procedures contained in Article nine of the Mental Hygiene Law would be available to persons admitted to residential treatment facilities for children and youth.

e) A new Section 9.53 of the Mental Hygiene Law is added to provide that admission to a residential treatment facility does not effect a change in the custody of a child. This section allows such custodian to give consent to medical care.

f) Sections seven and eight of the bill authorize the regulation of residential treatment facility for children and youth by the Office of Mental Health and provides for the development of a cooperative agreement with the Department of Social Services to govern the regulations of jointly licensed facilities. Such departments and the Department of Education must develop a uniform cost reporting system.

g) Section nine of the bill includes residential facilities for children and youth that serve between four and fourteen persons in the site selection law.

h) Section 10 of the bill adds a new Section 43.02 to the Mental Hygiene Law which authorizes the Commissioner of Mental Health to set rates of payment (for the medicaid assistance program) for facilities licensed under article 31 of the Mental Hygiene Law, except for facilities otherwise licensed under article twenty-eight of the public health law.

i) Sections 11 through 21 of the bill amend article 81 of the education law to include children residing in residential treatment facilities for children be included within its scope. Briefly, these amendments provide:

- The committee on the handicapped of the child's home district must evaluate each child being considered for admission to a residential treatment facility.
- A child admitted to a residential treatment facility may be placed in a variety of school settings ranging from public school to an institutional school.

- The tuition for a child in the residential treatment facility is the responsibility of the social services district with the financial responsibility for the child. The school district of the child's residence is required to pay the "school district basic contribution" for children determined to be handicapped.

j) Sections 22 through 28 of the bill amend the Social Services Law to provide reimbursement to social services districts that assume financial responsibility for tuition for children in residential treatment facilities. These sections make several changes to reflect the foregoing amendments to the Mental Hygiene Law. In addition, the bill requires approval of the medical director of a residential treatment facility before a child in the custody of the Commissioner of Social Services may be removed from such facility.

k) Sections 29, 30 and 31 of the bill amend Section 517 of the Executive Law. These changes include an amendment relating to the cost of care of children transferred from the Division for Youth to a state-operated facility to facilitate federal reimbursement. These amendments also clarify the circumstances under which the Director of the Division for Youth may apply for admission to a mental health hospital.

l) Section 32 of the bill amends Section 760 of the Family Court Act to allow transfer of a child, adjudicated by the Family Court, from a state-operated hospital to a residential treatment facility and to allow a Family Court judge to place a juvenile delinquent in need of placement in a mental health facility in the custody of a local Commissioner of Social Services.

m) This act would take effect July 1, 1981.

3. Prior legislative history: None.
4. Known position of others: The Office of Mental Health, Department of Social Services and the State Education Department are all supporting this bill.
5. Fiscal implications: During the 1981-82 fiscal year it is anticipated that most, if not all, residential treatment facility beds will result from conversion of existing foster care beds. While per diem costs of these beds will be increased, the level of federal financial participation will also increase. Thus, only a modest increase in cost to state and local government is projected. State funds were appropriated in the 1981-82 Budget for this purpose.

6. Arguments in support of the bill: The development of the concept of residential treatment facilities for children and youth has developed from the obvious and acute lack of long-term residential facilities for mentally ill children who do not require hospitalization. Level of care studies performed in 1977 at state-operated psychiatric centers for children and youth indicated that some number of children served by these facilities could be served in less restrictive settings. Similarly, a population of mentally ill children have been identified in foster care institutions who require more intensive and clinically oriented service projects. These two factors pointed toward the development of the residential treatment facility class.

Establishment of the residential treatment facilities class will be the first step in developing a formal continuum of services under the jurisdiction of the Office of Mental Health. Heretofore, most resources of the Office for Children have been devoted to hospital treatment and a smaller amount toward locally sponsored outpatient services. The residential treatment facility class will fill part of the gap.

7. Arguments in opposition to the bill: None.
8. Reasons for recommendation: See number six above.

MEMORANDUM ACCOMPANYING COMMENTS ON BILLS BEFORE

THE GOVERNOR FOR EXECUTIVE ACTION

New York State Department of Social Services

July 27, 1981

Introduced by Senator Padavan at the
request of the Governor

SENATE

6864

RECOMMENDATION: Approval

STATUTES INVOLVED: Mental Hygiene Law, Social Services Law, Family Court
Act, Executive Law and Education Law

EFFECTIVE DATE: July 1, 1981

DISCUSSION:

1. Purpose of bill: Would create a sub-classification of the class of hospitals to be known as "residential treatment facilities for children and youths" into which public agencies having custody of children could make placements after review by a pre-admission certification committee.
2. Summary of provisions: Amends Section 1.03 of the Mental Hygiene Law to define "residential treatment facilities". Social services officials, authorized agencies and DFY would be enabled to apply for voluntary or involuntary admission to a residential treatment facility. Upon release of a child from such a facility, he would be returned to the person or entity having custody. The residential treatment facility could accept a child only after evaluation by a regional pre-admission certification committee representing the Office of Mental Health, the Commissioner of Social Services and the State Commissioner of Education. The medical portion of the child's clinical record would be protected from disclosure and all other information required by a social services district and would be subject to confidentiality structures.
3. Prior legislative history: None.
4. Known position of others: None known.
5. Budget implications: Indeterminate.
6. Arguments in support: The program would provide care for mentally ill children who require more specialized treatment than is available in community residences or in foster care facilities, bridging the gap between such community based facilities and children's psychiatric centers.

The regional pre-admission certification committees will assure that the interests of the communities served are represented and that only those children requiring the level of care offered will be admitted. The opportunity afforded by the bill for the Department of Social Services to appoint members of these committees would enable the Department to include the Human Resources Administration on the committee serving the metropolitan region. Residential treatment facilities would provide a placement alternative for the severely disturbed foster child.

7. Arguments in opposition: None.
8. Reason for recommendation: See number six above.

KM

3- 6864

JUL 29 Recd

STATE EDUCATION DEPARTMENT

July 28, 1981

TO: Counsel to the Governor

FROM: Robert D. Stone

SUBJECT: S.6864

RECOMMENDATION: No Objection

REASONS FOR RECOMMENDATION:

This bill would amend the Mental Hygiene Law, the Education Law, the Social Services Law, the Executive Law and the Family Court Act to provide a legal structure for establishment of residential inpatient psychiatric facilities for children and youth under 21, admission and education of children and payment for services.

All of the amendments to the Education Law relate to Article 81 (§§4001-4006) which was added by Chapter 563 of the Laws of 1980 (the Institutional School Act). Such amendments define a "residential treatment facility for children and youth" (RTF) and integrate the RTF as a part of the definition of child care institution for purposes of review, placement, and payment for educational services for such children and youth. The Commissioner of Mental Health is added to those officials participating in the development and application of reimbursement methodologies. Public funding is barred for those children and youth not admitted in accordance with the provisions of the relevant section of the Mental Hygiene Law.

STATE OF NEW YORK



DEPARTMENT OF HEALTH

TOWER BUILDING • THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA • ALBANY, N.Y. 12237

DAVID AXELROD, M.D.
Commissioner

July 22, 1981

A-6864

The Honorable John G. McGoldrick
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

JUL 22 REC'D

Att: Rosemary Hannan
Legislative Secretary

Dear Mr. McGoldrick:

Thank you for the opportunity to comment on S.6864 currently before the Governor for action.

The bill provides for the establishment of residential treatment facilities for children and youth subject to the regulation of the Office of Mental Health. The facilities would provide services to mentally ill persons under the age of twenty-one on a continuous basis in a less intensive setting than a children's psychiatric hospital. Payment for services would be largely through the Medicaid program with the federal government contributing approximately half the reimbursement.

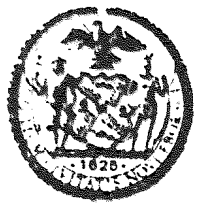
In order to make clear the responsibilities of the state agencies involved in health and mental health services and Medicaid reimbursement, the legislation requires a cooperative agreement among the Departments of Health and Social Services and the Office of Mental Health. To the extent that federal reimbursement is not impaired, the agreement will place with the Office of Mental Health the responsibility for supervising the care and services provided in residential treatment facilities for children and youth.

The Department of Health has no objection to the enactment of S.6864.

Sincerely,

Peter J. Millock
General Counsel

S - 6864



THE CITY OF NEW YORK
OFFICE OF THE MAYOR

MARGARET L. WEISS
LEGISLATIVE REPRESENTATIVE

111 Washington Avenue
Albany, New York 12210
(518) 462-5611

52 Chambers Street
New York, New York 10007
(212) 566-5135

July 16, 1981

JUL 16 1981

M E M O R A N D U M

TO: Honorable John G. McGoldrick
Counsel to the Governor

FROM: Margaret L. Weiss *Margie*

RE: Senate Bill No. 6864 - By Senator Padavan

AN ACT to amend the mental hygiene law, the education law, the social services law, the executive law and the family court act, in relation to residential treatment facilities for children and youth

You have requested the comments and recommendation of the Mayor concerning the above bill which is before the Governor for executive action.

Please be advised that the Mayor has no objection to said legislation.

N/O

5-6864

MEMORANDUM

STATE
ADVOCATE
FOR THE
DISABLED

TO : Hon. John G. McGoldrick
FROM : Frances G. Berko, State Advocate
SUBJECT: Pending legislation

Office :
File no :
Reference :

JUL 17 1981

DATE : 7/17/81



A telephone call from a secretary in the New York office this morning informed me that the following bills had been received for comment:

- Senate Bill 1112-C/A.30013 permitting admission to mental health services upon the recommendation of a licensed psychologist or a certified social worker. In view of the shortages of qualified physicians on a 24 hour, 7 day/week basis, this measure is needed to assure persons with mental illness proper care and treatment when crises arise.
- Assembly Bill 7825-A establishing senior citizens employment opportunities pilot project. The need for ready utilization of the knowledge and experience of our senior citizens is well established. It also is believed that such employment opportunities will retard the onset and progression of debilitating conditions in the later years, thus decreasing the need for the more costly services required by the frail elderly. Signing of this bill is recommended.
- Senate Bill 6864 in relation to residential treatment facilities for children and youth. On the NBC Today Show of this state, there appeared a discussion segment on the acute need of viable treatment programs for children and youth with a mental illness. As part of this presentation it was mentioned that the acuteness of the problem may be founded, at least partially, in the fact that the deinstitutionalization programs for state hospitals occurred at a time when treatment programs for mentally ill children and youth were first establishing a good foundation. The current bill tends to rectify a problem which has now become acute throughout the state. Its signing is recommended.
- Senate Bill 4659 -- it's unfortunate that the realities of today's world make this piece of legislation necessary for life saving reasons. However, its becoming law will save lives and save costly medical bills at public expense. Governor's signature is recommended in the hope that some day we will be able to train certain segments of the population receiving public assistance to be responsible citizens and protect their own well being.

- Senate Bill 4988-B/A.7044-B, respite care for frail elderly and disabled adults. Governor's signature to this piece of legislation is recommended. Provision of such respite service is recommended as a means of preventing admission to more costly care and treatment programs on a year round basis.
- Senate Bill 5318-A/A.7337-A to establish statewide resource centers for geriatric education. No comment since copies of these bills could not be obtained from the documents office.

FGB/lm

S-6864

New York State Health Planning Commission

EMPIRE STATE PLAZA, TOWER BUILDING, ROOM 1683, ALBANY, NEW YORK 12237

MEMORANDUM

518-474-6416

TO: Honorable John G. McGoldrick, Counsel to the Governor

FROM: Eugene M. ~~Laks~~, Counsel

DATE: July 17, 1981

SUBJECT: S. 6864

JUL 17 Recd

Recommendation in Support Re: AN ACT to amend the mental hygiene law, the education law, the social services law, the executive law and the family court act, in relation to residential treatment facilities for children and youth

The proposed legislation provides the basis for establishment of residential treatment facilities (RTF) for children and youth. RTF's are defined as inpatient psychiatric treatment facilities which provide active treatment under the direction of a physician for individuals under the age of twenty-one. RTF's are to be considered a sub-class of facilities meeting the definition of hospital as found in the Mental Hygiene Law. To implement the program, appropriate amendments are made to the Mental Hygiene Law, the Education Law, Social Services Law, Executive Law and Family Court Act.

Among the most substantial amendments proposed by the legislation are those setting out the procedures for admission to an RTF. Admissions may be either voluntary or involuntary. A pre-admission certification committee will be established and be required to evaluate each person proposed for admission or transfer to an RTF in its geographic area. The committee would be comprised of clinical professionals licensed pursuant to the Education Law and at least one physician. The committee must evaluate the need of the individual for such treatment and certify that alternatives available would not meet those needs. RTF's would be prohibited from admitting a child whose need for admission has not been so certified. In addition, Medicaid and other government payments would be denied for RTF service to a child whose need for such service was not certified.

The amendments to the Education Law govern the evaluation of the education needs of children placed in an RTF. The committee on the handicapped of the school district in which the child resides is required to evaluate the educational needs of the child and report its recommendations to the pre-admission certification committee. Placement in the appropriate

educational setting, whether public or private, is then to be arranged and payment is to be made by the social services district and/or the school district with financial responsibility for the child.

Other amendments protect the confidentiality, with certain exceptions, of clinical records of a person admitted to a residential treatment facility for children and youth. Due process protections, including right to a hearing, are also afforded.

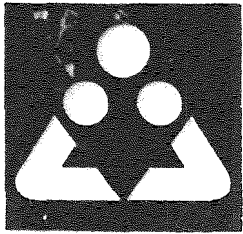
The memorandum in support of this legislation estimates that there are "Between 800 and 1,000 mentally ill children and adolescents in New York who require active inpatient psychiatric treatment on a continuous basis in a setting other than a children's psychiatric hospital." Care for those children is presently arranged in a variety of settings, many of which do not provide the appropriate level of care. Many are placed in institutions outside of New York State and, therefore, the State loses a measure of control over their care and treatment.

A large number of children presently in child care institutions under the Department of Social Services, in the custody of the Division of Youth or in private schools under the jurisdiction of the Department of Education would be better served in residential treatment facilities for children and youth. Such centers would provide intensive treatment to children who, as a result of mental illness, require active treatment but who do not require the protective environment provided by children's psychiatric centers.

The legislation has been drafted in such a way as to meet the requirements of federal law and regulations governing inpatient psychiatric facilities for persons under twenty-one, so federal financial participation will be available for services provided by the facilities.

Cognizant of the overwhelming need for appropriate in-state treatment for those children who require active care in a setting which is less restrictive than a children's psychiatric center, we would support approval of this legislation.

cc: Dr. Sachs
Mr. McAnaney
Dr. Whalen
Dr. McCormack
Mr. Hendricks



JEWISH BOARD *C-947*
OF FAMILY AND CHILDREN'S SERVICES

S-6864

120 WEST 57TH STREET, N.Y., N.Y. 10019 (212) 582-9100

SAUL Z. COHEN, *President*
JEROME M. GOLDSMITH, Ed.D., *Executive Vice-President*

July 27, 1981

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Honorable John G. McGoldrick
Executive Chamber
State Capitol
Albany, New York 12224

Re: Comments on Attached Legislation
A.7824-B
S.6864
A.8086-A

Dear Mr. McGoldrick:

Thank you for the opportunity to respond to the legislation listed above that has passed both houses of the Legislature.

● A.7824-B

We recommend that the Governor sign this bill into law.

It provides an opportunity to develop and regulate much needed adult day services programs for those who otherwise may return to institutional care.

● S.6864

We endorse this bill and recommend the Governor's signature. We believe that the Residential Treatment Facility legislation is an extremely thoughtful and significant breakthrough for emotionally disturbed children who otherwise and unnecessarily would be hospitalized but require intensive, more appropriate residential therapeutic care.

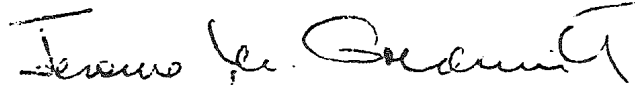
. . . Continued



● A.8086-A

We recommend the Governor's signature to this bill, too. Handicapped children recognized by local committees of the handicapped should be provided suitable transportation to and from a nonpublic school.

Sincerely yours,



Jerome M. Goldsmith, Ed.D.
Executive Vice President

lh

km

W-6864



Federation of Jewish Philanthropies of New York

התורה

130 EAST 59th STREET • NEW YORK, NEW YORK 10022 • (212) 980-1000

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July 17, 1981

JUL 21 Rec'd

Hon. John G. McGoldrick
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

RE: S.6864

Dear Mr. McGoldrick:

Federation of Jewish Philanthropies is in full support of the above listed bill on which you are requesting comments.

We appreciate the opportunity to share our views on this matter with you.

Sincerely,

David S. Liederman

Whether your legacy is a hundred dollars or a million — when you leave a legacy to Federation or any of its institutions, you are an important part of the promise and progress of tomorrow.

K.H.M.

S-6864

KENT H. BROWN
Legislative Counsel
One Elk Street
Albany, New York 12207
518-445-1262

New York State Bar Association

July 22, 1981

JUL 23 REC'D

Hon. John G. McGoldrick
Counsel to the Governor
Executive Chambers
State Capitol
Albany, New York 12224

RE: S.6864 - AN ACT to amend the mental hygiene law, the education law, the social services law, the executive law and the family court act, in relation to residential treatment facilities for children and youth

Dear Mr. McGoldrick:

You requested the views of this Association with respect to the above ten-day bill pending before the Governor.

The measure was the subject of our Legislative Report #224, prepared by our Committee on Juvenile Justice but not in time for submission to the Legislative officials.

Enclosed is a copy. You will note that the recommendation is for disapproval.

Sincerely,



Kent H. Brown
Legislative Counsel

KHB/b
Enc.

cc: Hon. Howard Levine
Robert J. Schack, Esq.



REPORT NO. 224

1981

S. 6864

A. 8559

By: Mr. Padavan

By: Mr. Connelly, et al.

Senate Committee: Rules Committee

Assembly Committee: Mental Health

Effective Date: Immediately

AN ACT to amend the mental hygiene law, the education law, the social services law, the executive law and the family court act, in relation to residential treatment facilities for children and youth

Law and Section referred to: Education Law, §§4001-6; Executive Law, §517; Family Court Act, §760; Mental Hygiene Law §§1.03, 9.13, 9.27, 9.51, 9.53, 31.02, 31.26, 43.02; Social Services Law §§2, 153, 364, 364-a, 367-a, 400

THIS BILL IS DISAPPROVED UNLESS AMENDED

The core of this complex bill is the creation of a new category of care facilities for young people admitted before the age of twenty-one. Called "residential treatment facilities for children and youth", they would be open programs offering in-patient psychiatric care and treatment, special education and social services. They could be operated by private agencies of Mental Health (OMH), the State Division for Youth or a local social services department. Apparently, at least some of the currently functioning residential treatment centers and joint social services/mental health department programs would be covered. The Committee strongly supports the portion of the bill authorizing residential treatment facilities.

Unfortunately, the bill contains an unannounced major change in admission criteria to mental health institutions that we find unacceptable. Under present law, a youth under eighteen years of age can only be admitted as a voluntary patient to a mental hospital on the request of his parent, legal guardian or next-of-kin or on his own request if he is sixteen or seventeen years old. The Mental Hygiene Law does not permit a hospital to accept a minor as a voluntary patient on the application of a foster care agency, the Division for Youth or any other public or private agency by itself. Compare MHL §9.13(a) with §9.27(b)(4)-(5), (8). In Parham v. J.R., 442 US 584 (1971), the Supreme Court found that Georgia's statutes authorizing minor voluntary admissions on application by a parent or guardian,

including a child care agency, do not violate due process. The Court did not pass on the constitutionality of minor voluntary admission on application by an agency that has custody, not guardianship, and without parental notice or consent. At least one appellate court held unconstitutional a voluntary minor admission on application by a probation officer appointed as temporary guardian for the purpose of so applying over the objections of the youth and his parents. In re L.L., 39 Cal App 3d 205, 114 Cal Rpts 11 (Ct App 1974).

Unless appointed by a court, New York child care agencies are not guardians. See SSL §384-6(3)(a), (8). The agencies' general powers to care for children in their custody cannot override parental rights, absent waiver or court order. See SSL §384-a(2)(c)(ii)-(iii). Indeed, as far as we are aware, New York's mental health institutions have only admitted children in placement as voluntary patients when guardianship was judicially committed to the child care agency, or when the parent has consented, or has waived the right to consent, or when the youth is of age to consent and does so.

This bill would allow agencies caring for children to have them admitted to mental hospitals, including residential treatment facilities for children and youth, without notice to their parents and without the due process protections of involuntary admission. For children with parents, minor voluntary admissions without parental knowledge or consent would make a mockery of the voluntary transfer agreements by which parents place their children for foster care, not hospitalization, and the agency agrees to apply diligent efforts to work with, not ignore, the parent and help the parent plan for his or her child. See SSL §§384-a(2)(c)(ii)(iii), 384-b(7)(f). For children placed by the courts, it is doubtful that a parent can constitutionally be deprived of his right to control the medical care of a child who does not require involuntary hospitalization, except possibly where the placement was due to parental unfitness. Cf. Matter of Hofbauer, 47NY2d648, 655 (1971). Even in the latter situation, unfit parents may have the right to consent unless a court has specifically ordered, for good cause shown, that their consent is unnecessary.

As for orphans and abandoned children, the issue of parental consent is irrelevant. But an equal protection problem is posed if every other child for whom guardianship is sought in order to consent to a major custody legal status change receives a best interests hearing cf. Matter of Esperanna Rivera Rivera, NYLJ June 19, 1981, p. F, col. 1 (Bx.Swn), and the Legislature removes that safeguard from orphans and abandoned youths being hospitalized.

If the proposed change were constitutional, we would still oppose it as unwise. The bill's countenance of failure to work with the parents is inconsistent with modern child welfare practice. Moreover, involved parents who are not consulted or listened to on hospitalization decisions are more likely to sue and may have viable causes of action for malpractice or deprivation of civil rights. Cf. Duchesne v. Sugarman, 566 F2d 81F (2d Cir 1977).

For the reasons stated, the Committee reluctantly recommends disapproval of the measure.

Report prepared by the Committee on Juvenile Justice.

Chairman of the Committee: Hon. Howard A. Levine

New York State Bar Association

July 28, 1981

Hon. John G. McGoldrick
Counsel to the Governor
Executive Chambers
State Capitol
Albany, NY 12224

RE: S.6864 - AN ACT to amend the
mental hygiene law, the education
law, the social services law, the
executive law and the family court
act, in relation to residential
treatment facilities for children
and youth

Dear Mr. McGoldrick:

You requested the views of this Association with respect to the above ten-day bill pending before the Governor. The Committee on Mental Hygiene recommends the bill be vetoed if it cannot be returned for amendment.

The bill creates a questionable new sub-class of hospitals, to be known as "residential treatment facilities for children and youth" (RTFCYS), to provide in-patient care in an open setting for mentally ill youth admitted before the age of twenty-one. More importantly, it radically and unconstitutionally changes the procedures for the admission to mental hospitals of minors in the care of public or private agencies.

RTFCYS would be licensed by the Department of Mental Hygiene. They could be operated by the Office of Mental Health (OMH) or an authorized agency, including a private not-for-profit organization, a local Department of Social Service (DSS) or the



Hon. John G. McGoldrick

July 28, 1981

State Division for Youth (DFY). Depending on cooperative agreements to be reached between DMH and DSS under proposed Mental Hygiene Law (MHL) §31.26, the bill would allow a local DSS without mental health expertise to be approved by OMH to operate an RTFCY and to then supervise and inspect itself. Even if the cooperative agreements do require RTFCY operators to be mental health professionals, calling a hospital a residential treatment facility without acknowledging its mental health role is either a futile euphemism or may be used as an excuse for sub-standard programs charging hospital rates.

Under proposed MHL §9.51, an interdisciplinary committee (one representative each from OMH, DSS and the State Education Department) would review proposed admissions or transfers to each RTFCY. Pursuant to subdivision(d), the committee would set up priorities for the "admission of children most immediately in need of such services", based upon which the RTFCY's "shall admit children". Pursuant to subdivision (a), an RTFCY "may receive as a patient any person in need of care and treatment" who has been so certified by the committee

These provisions can be read to allow admission based on the committee's certification regardless of the medical judgment of the admitting doctor, without the same notice to the Mental Health Information Service (MHIS) as is given when a minor is admitted to any other type of mental hospital, and subject to CPLR art.78 review procedures under a deferential sufficiency

of the evidence or arbitrary and capricious standard rather than the immediate court review and critical judicial scrutiny to which all other patients are entitled under the MHL. So read, the new section's lack of independent review by the admitting physician would violate Due Process under Parham v. J.R., 443 US (1980). The lack of independent medical review, and of notice to MHIS, and the reduced access to court would also violate Equal Protection.

Arguably, the committee review procedures can be read to supplement and not replace normal hospital admission procedures. The bill, however, makes several unconstitutional amendments to the usual procedures for minor admissions.

Juvenile delinquents placed with DFY receive notice, counsel, and an opportunity for an adversary hearing before being transferred to a DMH hospital pursuant to Executive Law §517. Adult prisoners have similar rights under Correction Law §408. The United States Supreme Court found such protections necessary under Due Process in Vitek v. Jones, 63 L.Ed 2d 552 (1980). This bill would add a new MHL §9.27(b)(10) allowing a delinquent placed with an agency other than DFY to apply for the youth's transfer without prior notice, counsel and hearing, thus violating Due Process and Equal Protection.

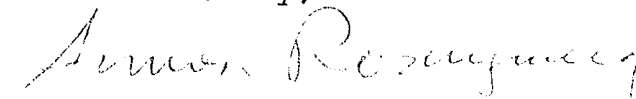
The same subdivision of the bill would allow agencies caring for children placed as Persons in Need of Supervision (PINS) to apply for their involuntary admission without prior notice, counsel and review. Since PINS placed with DFY would

have such rights under Executive Law § 517, the bill's failure to extend the rights to other PINS violates Equal Protection.

The proposed amendments to MHL § 9.13 and 9.27(b) (9) and (10) on their face appear to be merely an enlargement of the categories of persons or agencies who may effect the admission of children to psychiatric hospitals. In fact, however, they would permit transfers of children from non-psychiatric or other psychiatric facilities without the initial Due Process requirements ever accorded to sentence serving prisoners (Vitek v. Jones, 445 U.S. 480 (1980)).

The same really arbitrary subdivisions, however, go unconstitutionally beyond Parham v. J.R. by allowing an agency caring for a youth to have the child admitted as a voluntary patient on the agency's application without prior notice to the parents and regardless of parental consent or objection. Indeed, this would effect what the Supreme Court in Parham sought to protect the parental relationship. Unless there is a court order limiting the parents' rights or the parents have themselves waived the right to control the medical treatment of their child, it would violate both substantive Due Process and Equal Protection to admit foster children without either the protections of the involuntary hospitalization provisions or the safeguards in voluntary admission cases of notice to parents and the right of the parent to withhold consent.

Sincerely,



Simon Rosenzweig
Chairperson