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February 23, 1990

The Honorable Don Samuelson
The State Senate
124 State Capitol
St. Paul, MN 55155

**RE: Senate File 1801 and 1802
Discharge of RTC Residents With Mental Retardation**

Dear Senator Samuelson:

You are the author of Senate File 1801 which 1) repeals important sections of the Regional Treatment Center legislation from last year and 2) threatens the legal and constitutional rights of persons with mental retardation. We are concerned about several sections of the bill and want to describe them to you prior to any hearing in the Health and Human Services Committee.

With respect to discharge decisions for residents with mental retardation, the new language in Section 2 of the bill is destructive of several important statutory and constitutional rights of persons with developmental disabilities. Section 2 establishes an absolute veto power for a "parent, adult sibling, legal guardian, or legal designee" when a discharge is proposed. Problems with such an absolute veto of discharge of a person with mental retardation include:

1. There is no provision to determine an order of preference among the listed four individuals whose approval is necessary before a person is released from a regional center. It is not uncommon for family members to disagree about the future of their relative with a disability. What will happen if the parent disagrees with the decision to discharge, but the adult sibling of the RTC resident signs permission and wants the person discharged?
2. Existing private and public guardianship statutes (Chapters 252A and 525) require that the rights of an adult cannot be limited unless a court appoints a guardian found to be fit who takes an oath to act in the best interests of the person. By allowing individuals who are not the legally appointed guardians to refuse to allow a person to be discharged from a regional treatment center to community services, existing guardianship protections are violated. This language is so broad it would

allow a parent who has abused or neglected their son or daughter who now lives in an RTC to control the person's future.

3. The private guardianship statute, § 252. 539, clearly states that the civil rights of an adult cannot be limited unless the person meets the criteria of "incapacitated person" and the procedures under the guardianship statute are followed. Not every person with mental retardation residing in a regional treatment center has been found to meet the criteria of "incapacitated person", yet they have been stripped of their rights by Section 2.
4. The Commitment Act requires that the standard of the least restrictive alternative suitable to meet the person's needs must be followed. The Act states that the purpose of institutional placement is to provide services to render further institutionalization unnecessary. Minn. Stat. § 253B. 09, Subd. 1 and § 253B. 03, Subd. 7. The Commitment Act is clearly violated by allowing a parent or relative to have absolute veto power over community placement for a committed individual. The language in Senate File 1801 could result in the state having to maintain people in regional treatment centers when there is no treatment-based reason to do so.

The absolute veto power also puts into jeopardy the regional treatment centers' responsibility to discharge residents who no longer need the services at a regional treatment center. Federal Medicaid reimbursement will be denied for individuals who must be maintained at regional treatment centers because of parental vetoes when those individuals do not require the level of care provided at the regional treatment center. For people who no longer need the level of care provided at regional treatment centers, who will pay the \$211 per day for services which the person no longer needs, but must be provided because the parent does not agree with community placement?

To allow an absolute veto over discharge to community services also threatens the constitutional right to due process for persons with mental retardation committed to regional treatment centers. There are no standards to guide a family member in vetoing community placement. There are no appeal rights for an individual who desires to move out of a regional treatment center whose family will not approve.

7. Persons who have no families or whose families refuse to respond to the notice of discharge have no recourse. Apparently, if an individual has been abandoned, they must remain in an RTC forever.

The term "legal designee" is not defined. Yet, the legal designee can withhold approval for a discharge. Who appoints a legal designee? How does one become a legal designee? What are the duties of a legal designee?

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We strongly support parental and family involvement in discharge planning from regional treatment centers. Ample provision for notification of parents and family members is provided in language negotiated with Senator Samuelson in last year's regional treatment center legislation, Minn. Stat. § 256B. 092 Subd. 7. In addition to notice, information, and invitations to meetings to plan discharges, parents and near relatives are notified of their right to object to a proposed discharge. The person living at the regional treatment center may not be transferred from a regional treatment center while a review or appeal objecting to discharge is pending.

Most discharges from regional treatment centers occur with the cooperation of all parties involved. When there are differences of opinion as to what is the best plan for an RTC resident, current provisions in law provide the opportunity for discussions, negotiation and due process protections should the parties not work out their differences. Our office continues to be very concerned about the quality of community services. We have taken legal action to stop discharges and to obtain different and better services in the community.

Because this bill affects the fundamental rights of persons with developmental disabilities in the areas of guardianship, commitment and constitutional due process rights, the bill should be referred to the Judiciary Committee.

The second serious problem with Senate File 1801 and 1802 involves the deletions on page 2, beginning at line 23. The deleted language includes the target capacity at each regional treatment center for the future. The targeted capacities are necessary in order to provide guidance to the Department of Human Services on the development of community services to meet the needs of current regional treatment center residents.

The main reason that people with developmental disabilities live in regional treatment centers is because there are no available community services. The state of Minnesota cannot afford to pay for two beds for each person. As long as the state maintains a large capacity at regional treatment centers, resources needed for community services will not be available. The decreased RTC capacity is an integral and essential part of the negotiations and subsequent RTC legislation.

The regional treatment center legislation clearly links decreases in regional treatment center capacity to increases in state operated community services. These bills break that very important and fiscally responsible connection.

We urge that you withdraw your support for Senate File 1801 and 1802 because it 1) violates fundamental rights of persons with developmental disabilities living in regional treatment centers and 2) repeals important regional treatment center capacity targets which are necessary in order to fund the development of community services.

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If you have any questions regarding the issues raised, don't hesitate to get in touch with me at 332-1441. Thank you.

Sincerely,

Anne L. Henry
Attorney At Law

A handwritten signature in black ink, appearing to be 'AH' or a stylized 'A' followed by a vertical line.