



February 8, 2017

TO: Senator Sara Gelser, Chair
Senate Committee on Human Services
FR: Bob Joondeph, Executive Director
RE: SB 239

Thank you for this opportunity to provide testimony in support of SB 239.

Federal law has set heightened requirements for the operators of Medicaid-funded “Home and Community Based Settings” to demonstrate that their clients have the opportunity to enjoy full integration in their communities. Attached is a summary of these regulatory requirements.

The federal law recognized that there may be times when the safety of a resident requires that some limitations be placed upon their rights. (For example, the right to have 24 hour access to food, to have visitors, to have a room the resident can lock, choice of roommates.) If a limitation is necessary, the resident must consent or, if the resident lacks the capacity to consent, a legal representative must consent. Some residents, however, do not have an appointed legal representative.

SB 239 will create a process for appointing a legal representative when a program proposes a restriction for a resident who lacks the capacity to consent to the restriction. The process requires that a person first be found incapable of making a decision about the restriction. SB 239 sets forth a list of substitute decision makers for residents found incapable and, if none of those individuals are available, a process for arriving at a group decision. A resident is afforded a process for appealing any finding of incapacity.

SB 239 also recognizes that restriction may be necessary before the process can be completed. In those circumstances, temporary restrictions may be put in place for a limited time.

I have been a member of a work group that is continuing to refine SB 239. We hope to have a group of proposed amendments for your consideration to address a number of, as yet, unresolved technical issues.