



State of Connecticut
Department of Developmental Services

DDS

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**DEPARTMENT OF DEVELOPMENTAL SERVICES TESTIMONY
BEFORE THE JUDICIARY COMMITTEE**

March 4, 2022

Senators Winfield and Kissel, Representatives Stafstrom and Fishbein and members of the Judiciary Committee. I am Jordan A. Scheff, Commissioner of the Department of Developmental Services (DDS). Thank you for the opportunity to testify in opposition to **S.B. No. 164 AN ACT CONCERNING STATE AGENCY COMPLIANCE WITH PROBATE COURT ORDERS.**

Our department's concerns with **S.B. No. 164** center on provisions in section 1 that would enable the Probate Courts to require any state agency to follow a Probate Court's order or decree applicable to state agencies even though the Probate Courts are intended to be courts of limited jurisdiction. We are concerned that this new provision would extend the Probate Court's authority in a manner that could provide a mechanism to circumvent the department's process of funding prioritization based on the needs of individuals; necessitate numerous additional staffing resources; and conflict with federal and state laws, jeopardizing the department's ability to claim federal reimbursement on a variety of supports and services.

Access to DDS programs (both state and federally funded) are not an entitlement. Funding to serve additional individuals is appropriated in each biennial budget. Because the appropriated funding is never sufficient to provide every person who meets the statutory definition of intellectual disability with services, the department must make critical decisions on who is in most need of the limited funding and what services are available to meet those needs. DDS already has a process in place to prioritize funding based on an individual's needs. This legislation could extend Probate Court's authority to create a mechanism to circumvent the department's process and place certain individuals, who may not necessarily have greater needs, ahead of others in the prioritization process. Such an outcome would have the Probate Court usurp DDS's responsibility to determine eligibility and priority for funding and on whom state and federal Medicaid dollars are spent.

Further, if this bill were to become law, a Probate Court could order DDS to provide funding and services to individuals who have not applied for the department's services or for whom eligibility has been reviewed and denied. Decisions like these would require the department to provide supports through state-only funds, foregoing federal 50% reimbursement.

Currently, the vast majority of supports and services provided through DDS, are provided through one of the three DDS Home and Community-Based Services (HCBS) Medicaid Waivers. The waivers provide a mechanism to claim a 50% federal match on each support and service provided, as long as the supports provided meet the criteria of the approved waiver. (In FY 2021, the state received over \$562 million dollars in federal match through DDS Medicaid supports and services.) Among others, the first

specific criteria that must be met is that the individual must be determined to have intellectual disability, as defined in CGS 1-1g and apply for DDS supports. Only DDS has the statutory authority and the ability to determine if a person has intellectual disability. It is a requirement that a person be determined to have intellectual disability before that person can be eligible to receive DDS services. If there were an order from the Probate Court that DDS should provide funding and services and that person had not been appropriately determined by DDS to have intellectual disability, then these services would be paid for with state funding only, with no possibility of federal reimbursement. The DDS HCBS Medicaid waivers reference CGS 17a-210, which designates DDS as the state entity responsible for developing the criteria for eligibility for the department's funding and services. Were DDS to allow another state entity (i.e., Probate Court) to determine who was eligible for its funding and services, it would contradict Medicaid rules and regulations jeopardizing federal reimbursement. In addition, an order finding a person to have intellectual disability would usurp the "contested case" UAPA hearing rights, as articulated in statute, for department eligibility determinations.

In addition, requiring the department to appeal any such Probate Court orders to Superior Court would require additional legal positions within the department as well as support from the Office of Attorney General (OAG) on particularly difficult or complex cases and subsequent appeals, which would be a significant expense to both DDS and OAG, as the lengthy appeal process would be the only recourse for agencies. Currently DDS has four staff attorneys and one of those attorneys is limited to prosecuting cases for the DDS Abuse & Neglect Registry. If a DDS attorney were required to attend each hearing for which DDS receives a Probate Court notice (approximately 3,000 per month), it would require the department to add 10 attorneys who would be limited to probate proceedings for individuals with intellectual disability.

Currently, the Probate Courts already have the authority to enforce orders by convening a contempt "show cause" hearing if it is alleged that an agency has not complied with an order. The agency would then have the opportunity to address the possible exercise of authority beyond what is conferred by statute, and if the Probate Court still maintained its order, hold the agency in contempt, which could then be appealed to Superior Court. In *Bellonio v. Richardson, 2 Conn. Rpter 789, 1990 WL 274581 (1990)*, the Superior Court ruled that the alleged failure of a state agency (DMR) to comply with an order within the limited jurisdiction of the Probate Court should be left to the Probate Courts' contempt authority for enforcement.

This legislation would strain existing staff resources and potentially require the department to hire additional staff including case managers, direct care staff and attorneys depending on the court orders. For these reasons, the Department of Developmental Services must oppose Senate Bill 164.

Thank you for the opportunity to testify to DDS's concerns with [S.B. No. 164](#) AN ACT **CONCERNING STATE AGENCY COMPLIANCE WITH PROBATE COURT ORDERS**. Please contact Kevin Bronson, DDS Director of Communications, Legislation and Regulations at 860-550-3497 with any questions.