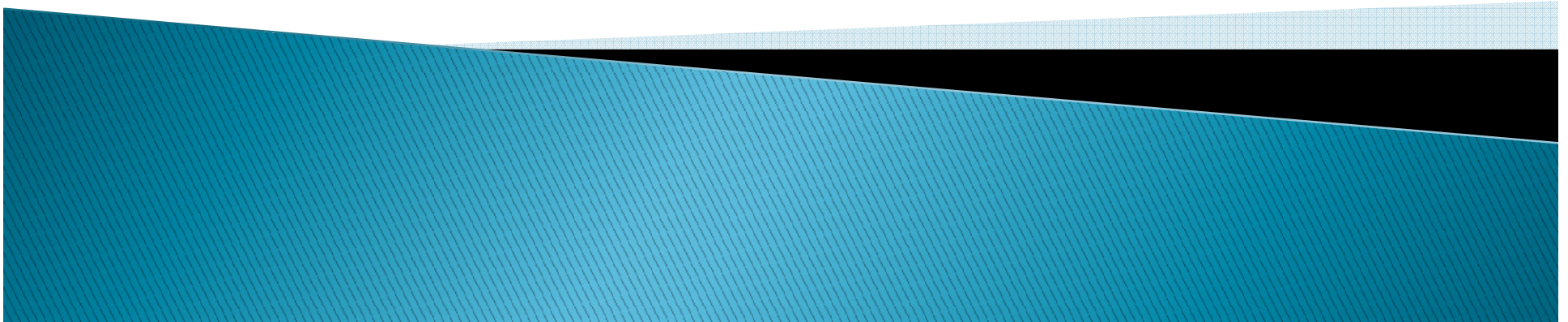


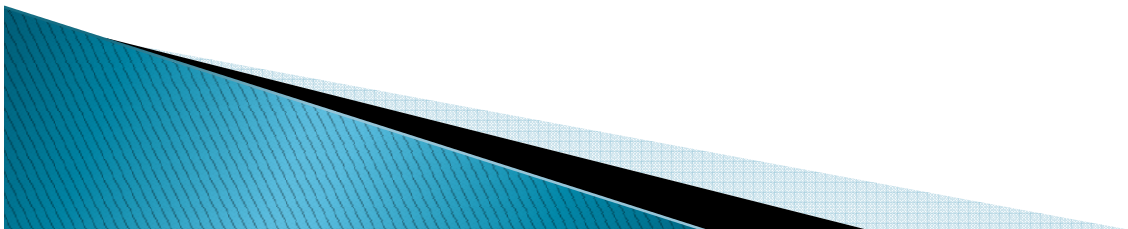
# HB 346: Changes to Delaware's Civil Commitment Laws

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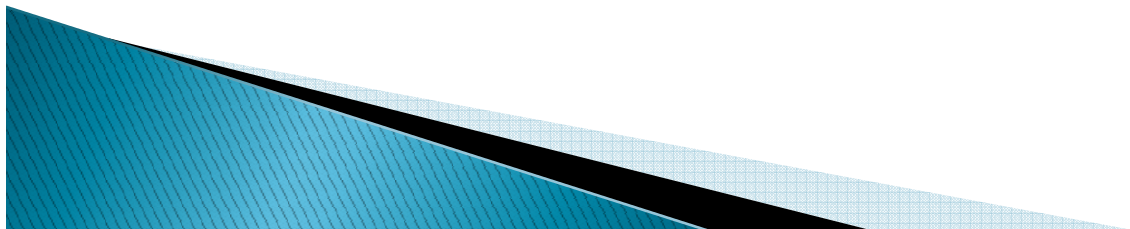
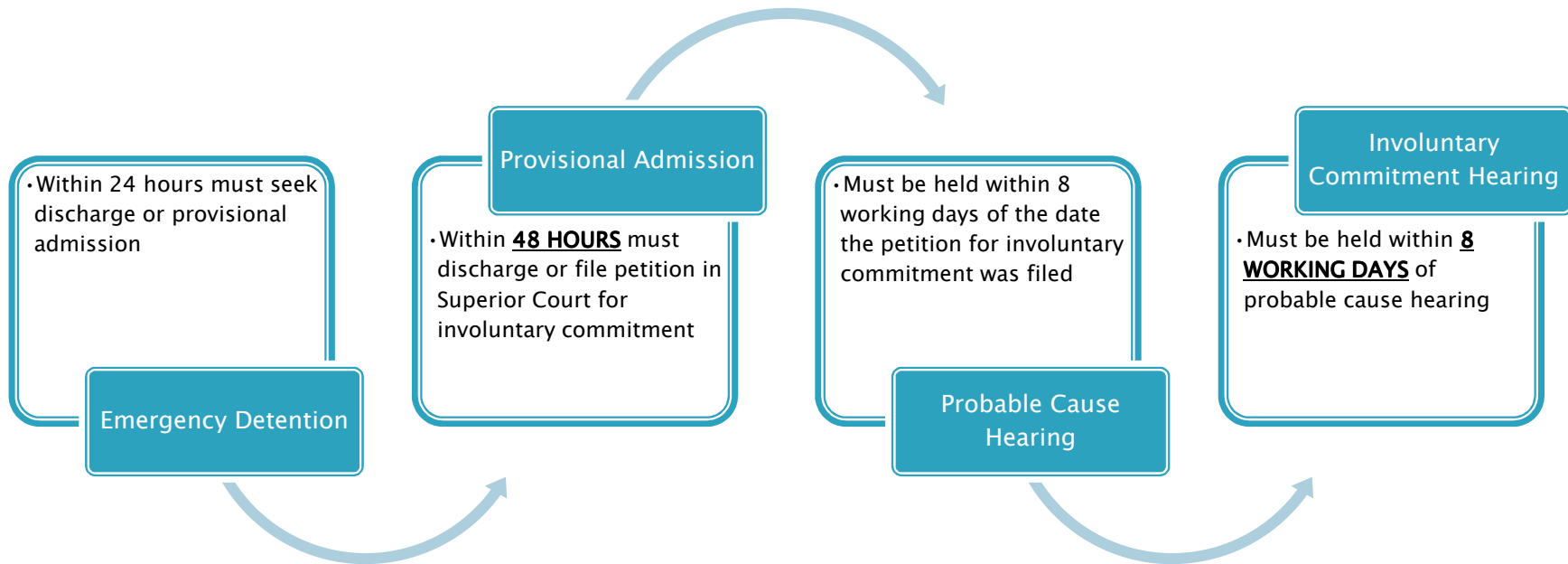


# HB 346

- ✓ In June 2013, the Delaware General Assembly passed HJR 17, establishing a Study Group for “conducting a comprehensive evaluation of Delaware’s civil mental health laws, as found in Chapters 50 and 51 of Title 16 of the Delaware Code, and making recommendations for improvement.”
- ✓ The Study Group issued its final report in April 2014. Subsequently, HB 346 was introduced in the General Assembly to effectuate the Study Group’s recommendations.
- ✓ HB 346 passed the General Assembly on June 26, 2014 and is currently awaiting the Governor’s signature. It will become operational upon signing.

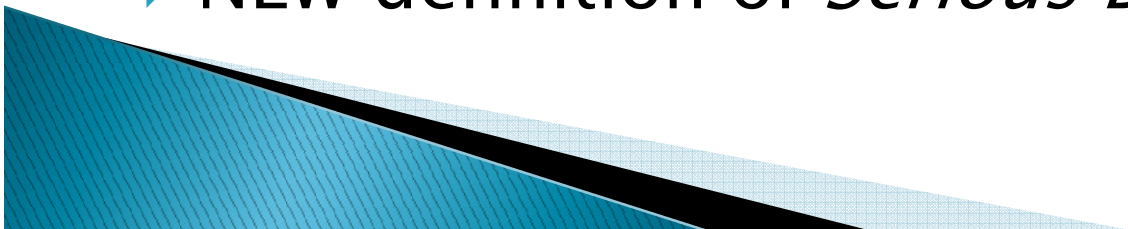


# Overview of Civil Commitment Process



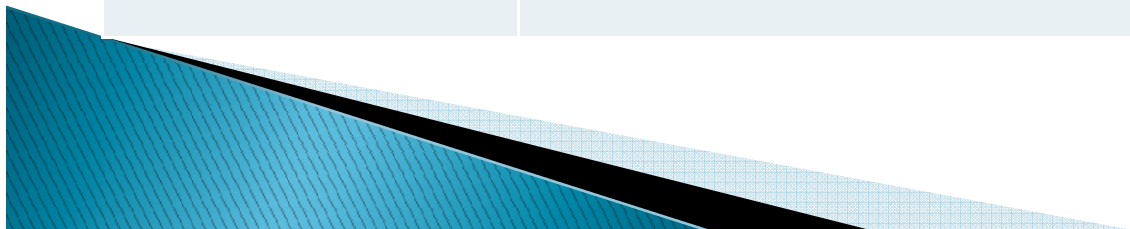
# Emergency Detention

- ▶ HB 346 does not make any changes to the underlying standard for emergency detention or the 24 hour timeframe
- ▶ Standard: Whether an individual with an apparent mental condition is dangerous to self or dangerous to others
- ▶ MODIFIED definition of *Dangerous to Self*
- ▶ NEW definition of *Serious Bodily Harm*



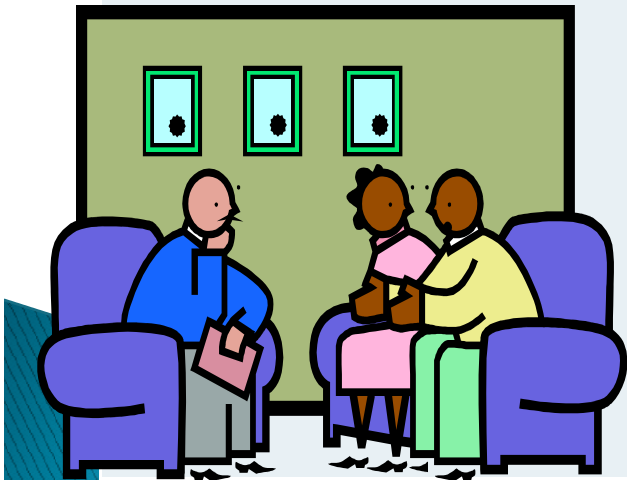
# Emergency Detention

	Current Definition	New Definition
Dangerous to Self	by reason of mental condition the person is likely to cause injury to oneself and to require immediate care, treatment, or detention.	by reason of mental condition there is a substantial likelihood that the person will imminently sustain serious bodily harm to oneself. This determination shall take into account a person's history, recent behavior, and any recent act or threat.
Serious Bodily Harm	N/A	physical injury which creates a substantial risk of death, significant and prolonged disfigurement, significant impairment of health, or significant impairment of the function of any bodily organ.



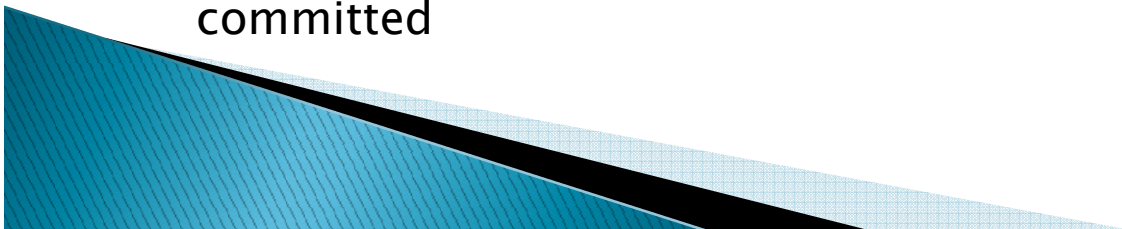
# Definition of “Psychiatrist”

	Current Definition	New Definition
Chapter 51	Possesses a valid State of Delaware license to practice as a psychiatrist	N/A (HB 346 incorporates Chapter 51, Subchapter II, into Chapter 50)
Chapter 50	<p>a. A physician licensed to practice medicine in this State specializing in the field of psychiatry, or a physician employed by the Delaware Psychiatric Center, registered with the Medical Council of Delaware and certified by the Delaware Psychiatric Center Medical Director to the Medical Council of Delaware as being qualified in the diagnosis and treatment of persons with mental conditions; or</p> <p>b. Any physician employed by the United States government within the State in the capacity of psychiatrist and certified by the Delaware Psychiatric Center Medical Director to the Medical Council of Delaware as qualified in the diagnosis and treatment of persons with mental conditions.</p>	An individual who possesses a valid State of Delaware license to practice medicine and has completed a residency training program approved by the Accreditation Council for Graduate Medical Education in psychiatry



# Provisional Admission

- ▶ First step after 24-hour emergency detention
- ▶ **NEW STANDARD**  
Psychiatrist provides written certification that an individual:
  - 1) Appears to be a person with a mental condition;
  - 2) The person has been offered voluntary inpatient treatment and has declined such care and treatment or lacks the capacity to knowingly and voluntarily consent to such care and treatment;
  - 3) As a result of the person's apparent mental condition, the person poses a present threat, based upon manifest indications, of being dangerous to self or dangerous to others; and
  - 4) Less restrictive alternatives have been considered and determined to be clinically inappropriate at the present time.
- ▶ After the psychiatrist's certification, the hospital has **48 hours** to decide whether to seek court commitment
- ▶ At the end of that period, the hospital must either discharge that individual or file a complaint in Superior Court to have him or her committed

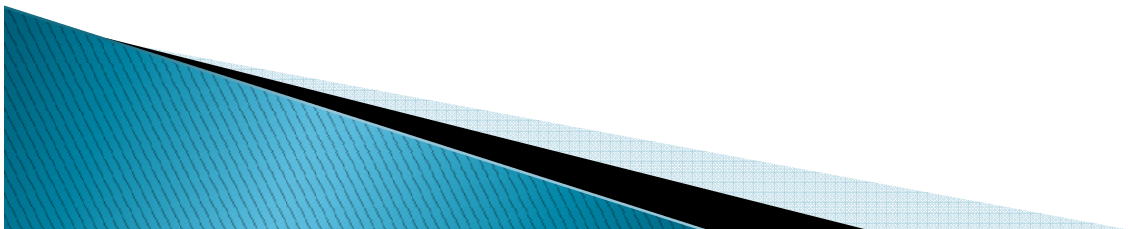


# Provisional Admission

- ▶ Once HB 346 becomes operational, emergency detention will be a pre-requisite to provisional admission.
- ▶ This applies to all circumstances which require an individual to be admitted for involuntary treatment

**Example:** Mary has been receiving voluntary treatment at DPC for two weeks. She recently requested to be discharged but her psychiatrist believes that Mary continues to presents a danger to herself or a danger to others and needs to remain hospitalized. Mary refuses to remain at DPC voluntarily. Mary's doctor wishes to initiate involuntary treatment for Mary. Mary's doctor must hold Mary on an emergency detention prior to admitting her via provisional admission.

- ▶ Each step in the involuntary commitment process – including emergency detention – provides an opportunity for evaluation and assessment as to whether involuntary treatment is truly necessary. All individuals should be afforded the same opportunities for evaluation and assessment, no matter when or how they come into the system on an involuntary basis.





# Probable Cause Hearing

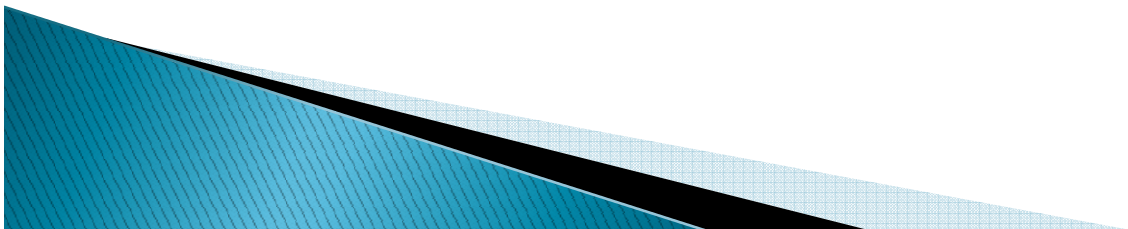
- ▶ The probable cause hearing must be held no later than 8 days after the hospital files its complaint with Superior Court
- ▶ There is no jury and the hearing is not open to the public



Mitchell Building, Holloway Campus

# Probable Cause Hearing

- ▶ HB 346 makes no changes to the standard or timing of probable cause hearings
- ▶ NEW: Individuals must be given the opportunity to agree/prohibit/restrict disclosure of probable cause complaint to spouse, relative, close friend, or other person identified by individual
- ▶ NEW: The Superior Court can place an individual on Outpatient Treatment Over Objection (OTOO) directly from a probable cause hearing

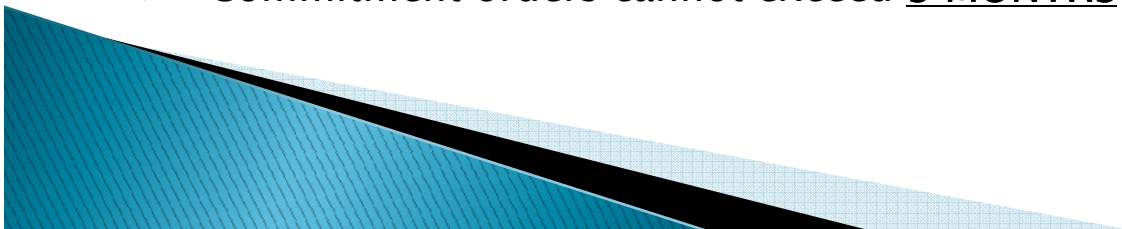


# Involuntary Inpatient Commitment Hearing

## NEW STANDARD:

An individual shall be involuntarily committed for inpatient treatment only if all of the following criteria are met by clear and convincing evidence:

- 1) The individual is a person with a mental condition;
  - 2) Based upon manifest indications, the individual is: (i) dangerous to self; or (ii) dangerous to others;
  - 3) All less restrictive alternatives have been considered and determined to be clinically inappropriate at the time of the hearing; and
  - 4) The individual has declined voluntarily inpatient treatment, or lacks the capacity to knowingly and voluntarily consent to inpatient treatment. When evaluating capacity, the court shall consider an individual's ability to understand the significant consequences, benefits, risks, and alternatives that result from the individual's decision to voluntarily request or decline inpatient treatment.
- ▶ Hearings must be held within **8 WORKING DAYS** of the probable cause hearing
  - ▶ Commitment orders cannot exceed **3 MONTHS**

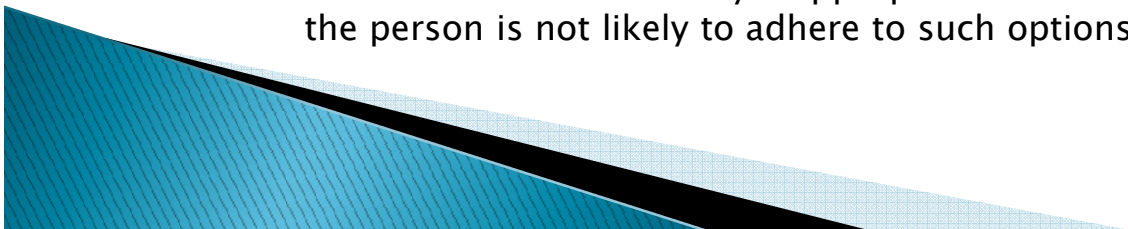


# Outpatient Treatment Over Objection

## NEW STANDARD:

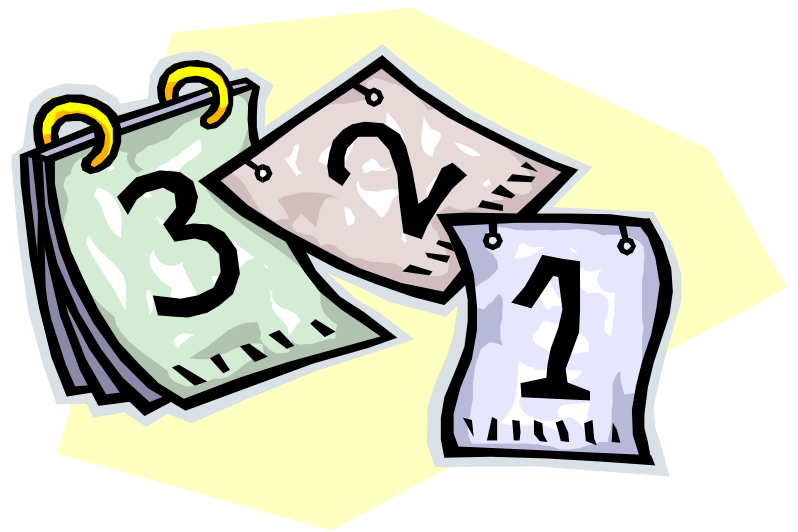
A person shall be involuntarily committed by the court for outpatient treatment over objection only if all of the following criteria are satisfied by clear and convincing evidence:

- 1) The person is 18 years of age or older.
- 2) The person has a documented mental condition.
- 3) The person is reasonably expected to become dangerous to self or dangerous to others or otherwise unlikely to survive safely in the community without treatment for the person's mental condition.
- 4) The person is currently refusing to voluntarily participate in the treatment plan recommended by the person's mental health treatment provider or lacks the capacity to determine whether such treatment is necessary.
- 5) The person has a documented history of lack of adherence with recommended treatment for the mental condition, or poses an extreme threat of danger to self or danger to others based upon recent actions, that has either:
  - i. Resulted in a deterioration of functioning that was observed to be dangerous to the individual's personal health and safety; or
  - ii. Resulted in a deterioration of functioning that was observed to be imminently dangerous to self or dangerous to others, including but not limited to suicidal ideation, violent threats, or violence towards others.
- 6) All less restrictive treatment options have been considered and have either been determined to be clinically inappropriate at this time or evidence is offered to show that the person is not likely to adhere to such options.



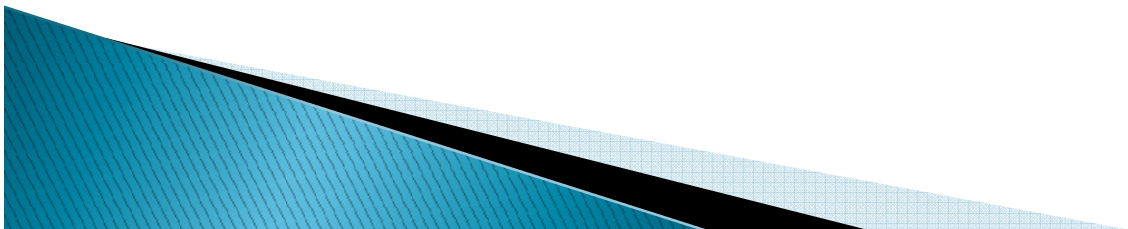
# Outpatient Treatment Over Objection

- ▶ Psychiatrists no longer able to file “certificates of non–amenability”; if someone on OTOO needs to be re–hospitalized must initiate an emergency detention
- ▶ Orders for OTOO cannot exceed 3 MONTHS



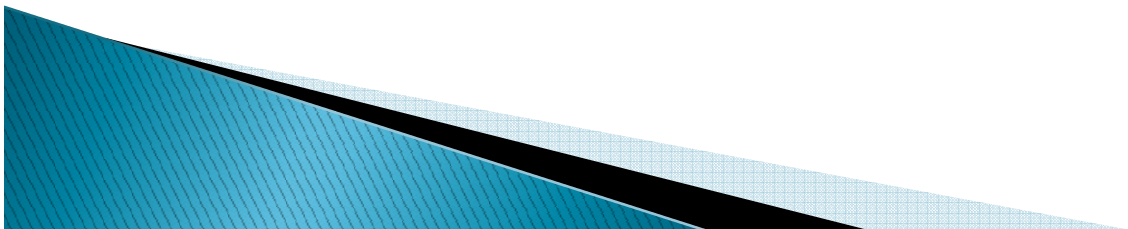
# Voluntary Hospitalization

- ▶ HB 346 requires that before an individual is admitted for inpatient treatment on a voluntary basis they must be notified verbally and in writing of the legal consequences of voluntary admission in language that is understandable to the person, including, but not limited to:
  - 1) The person will not to be allowed to leave the hospital grounds without permission of the treating psychiatrist;
  - 2) If the person seeks discharge prior to the discharge recommended by the person's treatment team, the person's treating psychiatrist may initiate the involuntary inpatient commitment process if the psychiatrist believes the individual presents a danger to self or danger to others; and
  - 3) Unless the involuntary commitment process is initiated, the person will not have the hospitalization reviewed by the Superior Court.
  
- ▶ The admitting hospital must “reasonably believe” that the person seeking voluntary treatment understands the consequences described above.



# Voluntary Hospitalization

- ▶ An individual who is hospitalized voluntarily may request to be discharged at any time. The hospital has 72 HOURS to consider such a request.
- ▶ If a hospital disagrees with a voluntary patient's request for discharge, hospital must place individual on an emergency detention to initiate the involuntary commitment process





# Patient Rights While Hospitalized

## Mental Health Patients' Bill of Rights, 16 *Del. Code* § 5161

- ▶ Right to an individualized treatment plan and discharge plan
- ▶ Right to know how certain treatments could affect oneself and other available treatment choices
- ▶ Right to have treatment records kept confidential
- ▶ Right to have reasonable access to visitors, to talk on the telephone, and to communicate privately with others
- ▶ Right to refuse treatment
- ▶ Right to file complaints and grievances and be notified of external systems for reporting abuse, neglect and mistreatment
- ▶ Right to be free from abuse and neglect
- ▶ Right to keep personal belongings

Note: This list is non-exhaustive and many of these rights can be restricted by the Court or the person's treatment team for safety reasons





# “Least Restrictive” is the Law

- ▶ *Olmstead v. LC*, 527 U.S. 581 (1999): Public entities must provide appropriate community-based services for individuals with disabilities
- ▶ In *Olmstead*, the Supreme Court explained that the unjustified institutional isolation of persons with disabilities as a form of discrimination “reflects two evident judgments:”
  - (1) “institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life.”
  - (2) “confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.”
- ▶ HOWEVER: Community –based treatment cannot be forced onto an individual
- ▶ *Olmstead* is an application of the Americans with Disabilities Act (ADA). Delaware law promotes “least restrictive” clinically-appropriate treatment alternatives, as required by the ADA and *Olmstead*.



# Questions?

