



# Senate

General Assembly

**File No. 339**

February Session, 2004

Senate Bill No. 466

*Senate, March 30, 2004*

The Committee on Public Health reported through SEN. MURPHY of the 16th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

**AN ACT CONCERNING REVISIONS TO THE DEPARTMENT OF MENTAL RETARDATION STATUTES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17a-248 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 As used in this section and sections 17a-248b to 17a-248g, inclusive,  
4 as amended, 38a-490a, as amended, and 38a-516a, as amended, unless  
5 the context otherwise requires:

6 (1) "Commissioner" means the Commissioner of Mental Retardation.

7 (2) "Council" means the State Interagency Birth-to-Three  
8 Coordinating Council established pursuant to section 17a-248b.

9 (3) "Early intervention services" means early intervention services,  
10 as defined in 34 CFR Part 303.12, as from time to time amended.

11 (4) "Eligible children" means children from birth to thirty-six months  
12 of age, who are not eligible for special education and related services  
13 pursuant to sections 10-76a to 10-76h, inclusive, as amended, and who  
14 need early intervention services because such children are:

15 (A) Experiencing a significant developmental delay as measured by  
16 standardized diagnostic instruments and procedures, including  
17 informed clinical opinion, in one or more of the following areas: (i)  
18 Cognitive development; (ii) physical development, including vision or  
19 hearing; (iii) communication development; (iv) social or emotional  
20 development; or (v) adaptive skills; or

21 (B) Diagnosed as having a physical or mental condition that has a  
22 high probability of resulting in developmental delay.

23 (5) "Evaluation" means a multidisciplinary professional, objective  
24 assessment conducted by appropriately qualified personnel in order to  
25 determine a child's eligibility for early intervention services.

26 (6) "Individualized family service plan" means a written plan for  
27 providing early intervention services to an eligible child and the child's  
28 family.

29 (7) "Lead agency" means the Department of Mental Retardation, the  
30 public agency responsible for the administration of the birth-to-three  
31 system in collaboration with the participating agencies.

32 (8) "Parent" means the child's parent or a person in a parental  
33 relationship to the child. With respect to a child who has no parent or  
34 person in a parental relationship, "parent" means the person  
35 designated to serve in a parental relationship for the purposes of this  
36 section and sections 17a-248b to 17a-248g, inclusive, as amended, 38a-  
37 490a, as amended, and 38a-516a, as amended, pursuant to regulations  
38 of the Department of Mental Retardation, adopted in accordance with  
39 chapter 54 in consultation with the Department of Children and  
40 Families, for children in foster care.

41 (9) "Participating agencies" includes, but is not limited to, the

42 Departments of Education, Social Services, Public Health, Children  
43 and Families and Mental Retardation, the Insurance Department, the  
44 Board of Education and Services for the Blind, the Commission on the  
45 Deaf and Hearing Impaired and the Office of Protection and Advocacy  
46 for Persons with Disabilities.

47 (10) "Qualified personnel" means persons who meet the standards  
48 specified in 34 CFR Part 303.12(e), as from time to time amended, and  
49 who are licensed physicians or psychologists or persons holding a  
50 state-approved or recognized license, certificate or registration in one  
51 or more of the following fields: (A) Special education, including  
52 teaching of the blind and the deaf; (B) speech and language pathology  
53 and audiology; (C) occupational therapy; (D) physical therapy; (E)  
54 social work; (F) nursing; (G) dietary or nutritional counseling; and (H)  
55 other fields designated by the commissioner that meet requirements  
56 that apply to the area in which the person is providing early  
57 intervention services, provided there is no conflict with existing  
58 professional licensing, certification and registration requirements.

59 (11) "Region" means a region within the Department of Mental  
60 Retardation.

61 (12) "Service coordinator" means a person carrying out service  
62 coordination, as defined in 34 CFR Part 303.22, as from time to time  
63 amended.

64 (13) "Primary care provider" means physicians and advanced  
65 practice registered nurses, licensed by the Department of Public  
66 Health, who are responsible for performing or directly supervising the  
67 primary care services for children enrolled in the birth-to-three  
68 program.

69 Sec. 2. Section 17a-248g of the general statutes, as amended by  
70 section 9 of public act 03-3 of the June 30 special session, is repealed  
71 and the following is substituted in lieu thereof (*Effective from passage*):

72 (a) Subject to the provisions of this section, funds appropriated to

73 the lead agency for purposes of section 17a-248, as amended by this  
74 act, sections 17a-248b to 17a-248f, inclusive, this section and sections  
75 38a-490a, as amended, and 38a-516a, as amended, shall not be used to  
76 satisfy a financial commitment for services that would have been paid  
77 from another public or private source but for the enactment of said  
78 sections, except for federal funds available pursuant to Part H of the  
79 Individuals with Disabilities Education Act, 20 USC 1471 et seq.,  
80 except that whenever considered necessary to prevent the delay in the  
81 receipt of appropriate early intervention services by the eligible child  
82 or family in a timely fashion, funds provided under said sections may  
83 be used to pay the service provider pending reimbursement from the  
84 public or private source that has ultimate responsibility for the  
85 payment.

86 (b) Nothing in section 17a-248, as amended by this act, sections 17a-  
87 248b to 17a-248f, inclusive, this section and sections 38a-490a, as  
88 amended, and 38a-516a, as amended, shall be construed to permit the  
89 Department of Social Services or any other state agency to reduce  
90 medical assistance pursuant to this chapter or other assistance or  
91 services available to eligible children. Notwithstanding any provision  
92 of the general statutes, costs incurred for early intervention services  
93 that otherwise qualify as medical assistance that are furnished to an  
94 eligible child who is also eligible for benefits pursuant to this chapter  
95 shall be considered medical assistance for purposes of payments to  
96 providers and state reimbursement to the extent that federal financial  
97 participation is available for such services.

98 (c) Providers of early intervention services shall, in the first instance  
99 and where applicable, seek payment from all third-party payers prior  
100 to claiming payment from the birth-to-three system for services  
101 rendered to eligible children, provided, for the purpose of seeking  
102 payment from the Medicaid program or from other third-party payers  
103 as agreed upon by the provider, the obligation to seek payment shall  
104 not apply to a payment from a third-party payer who is not prohibited  
105 from applying such payment, and who will apply such payment, to an  
106 annual or lifetime limit specified in the third-party payer's policy or

107 contract.

108 (d) The commissioner, in consultation with the Office of Policy and  
109 Management and the Insurance Commissioner, shall adopt  
110 regulations, pursuant to chapter 54, providing public reimbursement  
111 for deductibles and copayments imposed under an insurance policy or  
112 health benefit plan to the extent that such deductibles and copayments  
113 are applicable to early intervention services.

114 (e) The commissioner shall establish a schedule of fees based on a  
115 sliding scale for early intervention services. The schedule of fees shall  
116 consider the cost of such services relative to the financial resources of  
117 the parents or legal guardians of eligible children. Fees may be charged  
118 to any such parent or guardian, regardless of income, and shall be  
119 charged to any such parent or guardian with a gross annual family  
120 income of forty-five thousand dollars or more, except that no fee may  
121 be charged to the parent or guardian of a child who is eligible for  
122 Medicaid. The Department of Mental Retardation may assign its right  
123 to collect fees to a designee or provider participating in the early  
124 intervention program and providing services to a recipient in order to  
125 assist the provider in obtaining payment for such services. The  
126 commissioner may implement procedures for the collection of the  
127 schedule of fees while in the process of adopting or amending such  
128 criteria in regulation, provided the commissioner prints notice of  
129 intention to adopt or amend the regulations in the Connecticut Law  
130 Journal within twenty days of implementing the policy. Such collection  
131 procedures and schedule of fees shall be valid until the time the final  
132 regulations or amendments are effective.

133 (f) The commissioner shall develop and implement procedures to  
134 hold a recipient harmless for the impact of pursuit of payment for  
135 early intervention services against lifetime insurance limits.

136 (g) Notwithstanding any provision of title 38a relating to the  
137 permissible exclusion of payments for services under governmental  
138 programs, no such exclusion shall apply with respect to payments  
139 made pursuant to section 17a-248, as amended by this act, sections 17a-

140 248b to 17a-248f, inclusive, this section and sections 38a-490a, as  
141 amended, and 38a-516a, as amended. Except as provided in this  
142 subsection, nothing in this section shall increase or enhance coverages  
143 provided for within an insurance contract subject to the provisions of  
144 section 10-94f, subsection (a) of section 10-94g, subsection (a) of section  
145 17a-219b, subsection (a) of section 17a-219c, sections 17a-248, as  
146 amended by this act, 17a-248b to 17a-248f, inclusive, this section, and  
147 sections 38a-490a, as amended, and 38a-516a, as amended.

148 (h) Notwithstanding any provision of the general statutes or the  
149 regulations of Connecticut state agencies, the signature on an  
150 individualized family service plan of an advanced practice registered  
151 nurse, working within said nurse's scope of practice in collaboration  
152 with a physician licensed to practice medicine in this state, in  
153 accordance with section 20-87a, and performing or directly supervising  
154 the primary care services for children enrolled in the birth-to-three  
155 program, shall be deemed sufficient to order all such services included  
156 in the individualized family service plan and shall be deemed  
157 sufficient by the Department of Social Services to substantiate a claim  
158 for federal financial participation.

159 Sec. 3. Section 17a-211 of the general statutes is repealed and the  
160 following is substituted in lieu thereof (*Effective from passage*):

161 (a) In 1991, and every [two] five years thereafter, the Department of  
162 Mental Retardation shall develop and review a five-year plan in  
163 accordance with this section. The plan shall: (1) Set priorities; (2)  
164 identify goals and objectives and the strategies to be employed to  
165 achieve them; (3) define the criteria to be used in evaluating whether  
166 the department is making progress toward the achievement of such  
167 goals and objectives; (4) identify changes in priorities, goals, objectives  
168 and strategies from the prior plan; (5) describe and document progress  
169 made in achieving the goals and objectives outlined in the prior plan;  
170 and (6) estimate the type and quantity of staff and client services that  
171 will be needed over the life of the plan.

172 (b) Every [two] five years, the department shall hold public hearings

173 on a complete draft of the plan and, in January, 1992, and every [two]  
174 five years thereafter, the department shall submit the final plan and a  
175 transcript of the public hearings to the joint standing committees of the  
176 General Assembly having cognizance of matters relating to public  
177 health and appropriations and the budgets of state agencies.

178 Sec. 4. Section 17a-240 of the general statutes is repealed and the  
179 following is substituted in lieu thereof (*Effective October 1, 2004*):

180 [(a)] The Commissioner of Mental Retardation shall, within  
181 available appropriations, operate a school district within the  
182 Department of Mental Retardation, to be known as State of  
183 Connecticut-Unified School District #3. The school district shall  
184 provide educational services to persons eligible to receive services  
185 from State of Connecticut-Unified School District #3. The school  
186 district shall operate on a twelve-month calendar to provide  
187 uninterrupted educational programming. [There shall be an education  
188 council for the school district within the Department of Mental  
189 Retardation which shall be composed of seven members to be  
190 appointed by the Commissioner of Mental Retardation as follows: One  
191 member from each of the six regions within the Department of Mental  
192 Retardation and one member from the Council on Mental Retardation.  
193 The term of each member shall be coterminous with the term of the  
194 Governor. The members of the education council shall be persons with  
195 a demonstrated interest in and concern for infants and toddlers with  
196 developmental delays, and shall not be employees of the Department  
197 of Mental Retardation or the Department of Education. The education  
198 council shall annually elect a chairperson and a secretary from its  
199 membership. The education council shall meet at least four times a  
200 year or at such other times as the chairperson deems necessary.]

201 [(b)] The education council for the school district within the  
202 Department of Mental Retardation shall (1) be responsible for planning  
203 and maintaining such appropriate educational programs as the  
204 education council deems necessary or advisable in the interests of the  
205 persons benefiting from such programs, (2) make a continuing study of

206 the educational needs of seriously retarded persons in the state and  
207 conduct such planning as is necessary to meet their needs, and (3)  
208 report annually to the Commissioner of Mental Retardation regarding  
209 the progress and accomplishments of the school district.]

210 Sec. 5. Section 17a-241 of the general statutes is repealed and the  
211 following is substituted in lieu thereof (*Effective October 1, 2004*):

212 (a) The Commissioner of Mental Retardation shall, upon the  
213 recommendation of the education council of the school district,  
214 appoint a superintendent for said district. Said superintendent shall  
215 operate the school district in accordance with the rules and orders of  
216 the commissioner and with the policies and programs approved by the  
217 education council of said district. The superintendent shall, subject to  
218 the approval of the commissioner, [and upon consultation with the  
219 education council,] make rules for the administration of the school  
220 system, provided all such rules are in accordance with regulations  
221 established by the State Board of Education.

222 (b) The superintendent of the school district under the general  
223 supervision of the Commissioner for Mental Retardation [, and in  
224 consultation with the education council of the school district,] shall  
225 have the power to (1) establish and maintain within the department a  
226 state-wide system of programs as required; (2) purchase, receive, hold  
227 and convey personal property for school purposes and equip and  
228 supply such schools with necessary furniture, equipment and other  
229 appendages; (3) make agreements and regulations for establishing and  
230 conducting the district's programs and employ and dismiss, in  
231 accordance with the applicable provisions of section 10-151, such  
232 teachers and other staff as are necessary to carry out the intent of  
233 sections 17a-239 to 17a-244, inclusive, and to pay their salaries; (4)  
234 receive any federal funds or aid made available to the state for such  
235 programs and shall be eligible for and may receive any other funds or  
236 aid whether private, state or otherwise, to be used for the purposes of  
237 sections 17a-239 to 17a-244, inclusive. The superintendent of the school  
238 district may cooperate with the federal government in carrying out the

239 purposes of any federal law pertaining to the education of students  
240 within said district, and may adopt such methods of administration as  
241 are found by the federal government to be necessary, and may comply  
242 with such conditions as may be necessary to secure the full benefit of  
243 all federal funds available.

244 Sec. 6. Section 17a-242 of the general statutes is repealed and the  
245 following is substituted in lieu thereof (*Effective October 1, 2004*):

246 The Commissioner of Mental Retardation, together with the  
247 superintendent [and education council of the school district,] shall  
248 annually evaluate the progress and accomplishments of the school  
249 district. The Commissioner of Mental Retardation shall (1) submit  
250 annual evaluation reports to the Commissioner of Education in order  
251 to apprise the State Board of Education of the condition, progress and  
252 needs of the school district, and (2) follow procedures adopted by the  
253 Commissioner of Education in preparation of such annual evaluation  
254 reports.

255 Sec. 7. Subsection (e) of section 17a-248d of the general statutes, as  
256 amended by section 13 of public act 03-174, is repealed and the  
257 following is substituted in lieu thereof (*Effective from passage*):

258 (e) The state-wide system shall include a system for required  
259 notification to any local or regional school board of education no later  
260 than January first of each year of any child who resides in the local or  
261 regional school district, participates in the state-wide program and will  
262 attain the age of three during the next fiscal year. Such system of  
263 notification shall include provisions for preserving the confidentiality  
264 of such child and of the parent or guardian of such child.

265 Sec. 8. Sections 45a-668, as amended, and 17a-283 of the general  
266 statutes are repealed. (*Effective from passage*)

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>

Sec. 3	<i>from passage</i>
Sec. 4	<i>October 1, 2004</i>
Sec. 5	<i>October 1, 2004</i>
Sec. 6	<i>October 1, 2004</i>
Sec. 7	<i>from passage</i>
Sec. 8	<i>from passage</i>

**PH**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:**

Agency Affected	FY 05 \$	FY 06 \$
Department of Mental Retardation	None	None

**Municipal Impact:** None

**Explanation**

The bill allows the signature of an Advanced Practice Registered Nurse on an Individualized Family Service Plan (IFSP) within the Birth-to-Three system (administered by the Department of Mental Retardation) to be sufficient to order such services within the plan and therefore allowable for the state to claim reimbursement under Medicaid (currently physicians sign the IFSP's). This provision is not anticipated to impact enrollment in the program or change the current level of Medicaid reimbursement generated from the Birth-to-Three system. The bill makes two additional changes to the department's statutory requirement and will result in no fiscal impact.

**OLR Bill Analysis**

SB 466

**AN ACT CONCERNING REVISIONS TO THE DEPARTMENT OF MENTAL RETARDATION STATUTES****SUMMARY:**

This bill permits the state to receive federal Medicaid reimbursement for services Department of Mental Retardation (DMR) Birth-to-Three providers rendered under an individualized family service plan signed by an advanced practice registered nurse (APRN). It provides for confidentiality when school systems are notified that a child is aging out of the Birth-to-Three program.

The bill (1) requires DMR to hold public hearings and review its five-year plan every five, rather than every two, years and (2) eliminates the seven-member education council that advises the commissioner and the superintendent of DMR's Unified School District # 3.

EFFECTIVE DATE: Upon passage, except for the elimination of the education council, which is effective October 1, 2004.

**BIRTH-TO-THREE PROGRAM*****Medicaid Reimbursement***

The bill permits the state to receive federal Medicaid reimbursement for services authorized by an APRN. It does this by requiring the Department of Social Services to accept as sufficient to substantiate a claim for Medicaid reimbursement services ordered in an individualized family service plan signed by an APRN (1) working within the scope of his license, (2) in collaboration with a licensed physician, and (3) performing or directly supervising "primary care services" for children enrolled in the Birth-to-Three program. (Neither the bill nor existing Birth-to-Three statutes define primary care services. Individualized family service plans provide for early intervention services.)

***Ensuring Confidentiality When Notifying School Districts***

The law requires the Birth-to-Three program to include a system for notifying school districts by January 1<sup>st</sup> about local children receiving services who will turn age three during the next fiscal year. The bill requires this system to provide ways to preserve the child's and parent or guardian's confidentiality. (Federal Birth-to-Three law requires states to adopt policies and procedures to ensure the protection of personally identifiable information, including the right of parents to consent to the exchange of this information among agencies, consistent with federal and state law (34 CFR 303.460)).

### **DMR FIVE-YEAR PLAN**

Under current law, DMR every two years must submit a revised five-year plan to the Public Health and Appropriations committees following public hearings on a draft plan. The bill requires it to revise and submit the plan only every five years, making it a fixed, rather than a rolling, plan. The current plan is effective from 2002 to 2007. Among other things, it sets the agency's priorities, goals, objectives, and strategies and identifies changes from those in the previous plan.

### **EDUCATION COUNCIL**

The bill eliminates the seven-member education council that advises the DMR commissioner and the superintendent of DMR's Unified School District #3 on various matters. The council is statutorily responsible for planning and maintaining appropriate educational programs, studying educational needs of people with severe mental retardation, recommending a superintendent for the district, and consulting with him. Unified School District #3 currently serves only children under age three.

### **COMMITTEE ACTION**

Public Health Committee

Joint Favorable Report  
Yea 19    Nay 0