



Senate

General Assembly

File No. 656

February Session, 2004

Substitute Senate Bill No. 521

Senate, April 26, 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 substitute bill ought to pass.

AN ACT CONCERNING STATE LICENSING FOR CHANGE OF USE OF GROUP HOMES.

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

1 Section 1. Section 17a-227 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) No person, firm or corporation shall conduct or maintain within
4 this state a residential facility which it owns, leases or rents for the
5 lodging, care or treatment of persons with mental retardation or
6 autistic persons unless such person, firm or corporation, upon written
7 application, verified by oath, has obtained a license issued by the
8 Department of Mental Retardation.

9 (b) The commissioner shall adopt regulations, in accordance with
10 the provisions of chapter 54, to insure the comfort, safety, adequate
11 medical care and treatment of such persons at such residential
12 facilities. After receiving an application and making such investigation

13 as is deemed necessary and after finding the specified requirements to
14 have been fulfilled, the department shall grant a license to such
15 applicant to conduct a facility of the character described in such
16 application, which license shall specify the name of the person to have
17 charge and the location of such facility. Any person, firm or
18 corporation aggrieved by any requirement of the regulations or by the
19 refusal to grant any license may within twenty days of any order
20 directing the enforcement of any provision of such regulations or the
21 refusal of such license, appeal therefrom in accordance with the
22 provisions of section 4-183, except venue for such appeal shall be in the
23 judicial district in which such facility is located. If the licensee of any
24 such facility desires to place in charge thereof a person other than the
25 one specified in the license, application shall be made to the
26 Department of Mental Retardation, in the same manner as provided
27 for the original application, for permission to make such change. Such
28 application shall be acted upon within ten days from the date of the
29 filing of same. Each such license shall be renewed annually upon such
30 terms as may be established by regulations and may be revoked by the
31 department upon proof that the facility for which such license was
32 issued is being improperly conducted, or for the violation of any of the
33 provisions of this section or of the regulations adopted pursuant to this
34 subsection, provided the licensee shall first be given a reasonable
35 opportunity to be heard in reference to such proposed revocation. Any
36 person, firm or corporation aggrieved by such revocation may appeal
37 in the same manner as hereinbefore provided. Each person, firm or
38 corporation, upon filing an application under the provisions of this
39 section for a license for a facility providing residential services for five
40 or more persons, shall pay to the State Treasurer the sum of fifty
41 dollars. Any license issued pursuant to this section shall be invalid
42 upon a change in the use of such facility from the lodging, care or
43 treatment of persons with mental retardation or autistic persons to any
44 other use. Any such change in use shall require the filing of an
45 application for a new license with the appropriate state agency, as
46 determined by such newly proposed use.

47 (c) Notwithstanding any regulation, [to the contrary,] subject to the

48 provisions of this section, the Department of Mental Retardation may
49 contract, within available appropriations, with any organization for the
50 operation of a community-based residential facility, provided such
51 facility is licensed by the Department of Mental Retardation.

52 (d) The department may contract with any person, firm or
53 corporation to provide residential support services for persons with
54 mental retardation who reside in settings which are not licensed by the
55 department. The commissioner shall adopt regulations, in accordance
56 with the provisions of chapter 54, to ensure the safety, adequate
57 supervision and support of persons receiving residential support
58 services.

59 (e) Any person, firm or corporation who conducts any facility
60 contrary to the provisions of this section shall be fined not more than
61 one thousand dollars or imprisoned not more than six months or both.
62 Any person, firm or corporation who conducts any facility contrary to
63 the regulations adopted pursuant to subsection (b) of this section shall
64 be fined not more than one thousand dollars.

65 Sec. 2. Section 17a-227 of the general statutes, as amended by section
66 2 of public act 03-146, is repealed and the following is substituted in
67 lieu thereof (*Effective July 1, 2004*):

68 (a) No person, firm or corporation shall conduct or maintain within
69 this state a residential facility which it owns, leases or rents for the
70 lodging, care or treatment of persons with mental retardation or
71 autistic persons unless such person, firm or corporation, upon written
72 application, verified by oath, has obtained a license issued by the
73 Department of Mental Retardation.

74 (b) The commissioner shall adopt regulations, in accordance with
75 the provisions of chapter 54, to insure the comfort, safety, adequate
76 medical care and treatment of such persons at such residential
77 facilities. Such regulations shall include requirements that: (1) All
78 residential facility staff be certified in cardiopulmonary resuscitation in
79 a manner and timeframe prescribed by the commissioner; (2) records

80 of staffing schedules and actual staff hours worked, by residential
81 facility, be available for inspection by the department upon advance
82 notice; (3) each residential facility develop and implement emergency
83 plans and staff training to address emergencies that may pose a threat
84 to the health and safety of the residents of the facility; (4) department
85 inspectors verify during licensing inspections, that (A) staff is
86 adequately trained to respond in an emergency, and (B) a summary of
87 information on each resident is available to emergency medical
88 personnel for use in an emergency; and (5) at least half of the
89 inspections conducted by the department after initial licensure are
90 unannounced.

91 (c) After receiving an application and making such investigation as
92 is deemed necessary and after finding the specified requirements to
93 have been fulfilled, the department shall grant a license to such
94 applicant to conduct a facility of the character described in such
95 application, which license shall specify the name of the person to have
96 charge and the location of such facility. Any person, firm or
97 corporation aggrieved by any requirement of the regulations or by the
98 refusal to grant any license may within twenty days of any order
99 directing the enforcement of any provision of such regulations or the
100 refusal of such license, appeal therefrom in accordance with the
101 provisions of section 4-183, except venue for such appeal shall be in the
102 judicial district in which such facility is located. If the licensee of any
103 such facility desires to place in charge thereof a person other than the
104 one specified in the license, application shall be made to the
105 Department of Mental Retardation, in the same manner as provided
106 for the original application, for permission to make such change. Such
107 application shall be acted upon within ten days from the date of the
108 filing of same. Each such license shall be renewed annually upon such
109 terms as may be established by regulations and may be revoked by the
110 department upon proof that the facility for which such license was
111 issued is being improperly conducted, or for the violation of any of the
112 provisions of this section or of the regulations adopted pursuant to this
113 subsection, provided the licensee shall first be given a reasonable
114 opportunity to be heard in reference to such proposed revocation. Any

115 person, firm or corporation aggrieved by such revocation may appeal
116 in the same manner as hereinbefore provided. Each person, firm or
117 corporation, upon filing an application under the provisions of this
118 section for a license for a facility providing residential services for five
119 or more persons, shall pay to the State Treasurer the sum of fifty
120 dollars. Any license issued pursuant to this section shall be invalid
121 upon a change in the use of such facility from the lodging, care or
122 treatment of persons with mental retardation or autistic persons to any
123 other use. Any such change in use shall require the filing of an
124 application for a new license with the appropriate state agency, as
125 determined by such newly proposed use.

126 (d) Notwithstanding any regulation, [to the contrary,] subject to the
127 provisions of this section, the Department of Mental Retardation may
128 contract, within available appropriations, with any organization for the
129 operation of a community-based residential facility, provided such
130 facility is licensed by the department. The department shall include in
131 all contracts with such organizations, provisions requiring the
132 department to (1) conduct periodic reviews of contract performance,
133 and (2) take progressive enforcement actions if the department finds
134 poor performance or noncompliance with the contract, as follows: (A)
135 The organization may be placed on a strict schedule of monitoring and
136 oversight by the department; (B) the organization may be placed on a
137 partial-year contract; and (C) payments due under the contract may be
138 reduced by specific amounts on a monthly basis until the organization
139 complies with the contract. If compliance cannot be achieved, the
140 department shall terminate the contract.

141 (e) The department may contract with any person, firm or
142 corporation to provide residential support services for persons with
143 mental retardation who reside in settings which are not licensed by the
144 department. The commissioner shall adopt regulations, in accordance
145 with the provisions of chapter 54, to ensure the safety, adequate
146 supervision and support of persons receiving residential support
147 services.

148 (f) Any person, firm or corporation who conducts any facility
149 contrary to the provisions of this section shall be fined not more than
150 one thousand dollars or imprisoned not more than six months or both.
151 Any person, firm or corporation who conducts any facility contrary to
152 the regulations adopted pursuant to subsection (b) of this section shall
153 be fined not more than one thousand dollars.

154 Sec. 3. (NEW) (*Effective from passage*) Notwithstanding any other
155 regulation, any license issued by the Commissioner of Children and
156 Families for a group home or residential care facility pursuant to
157 chapter 319 or 319a of the general statutes shall be invalid upon a
158 change of use for such facility. Any such change of use for such facility
159 shall require the filing of an application for a new license with the
160 appropriate state agency, as determined by such newly proposed use.

161 Sec. 4. Section 17a-210a of the general statutes is repealed and the
162 following is substituted in lieu thereof (*Effective July 1, 2004*):

163 (a) [The Commissioner of Mental Retardation shall establish] There
164 is established an independent [ombudsperson] ombudsman office
165 within the Department of Mental Retardation that is responsible for
166 receiving and making recommendations to the commissioner for
167 resolving complaints affecting consumers under the care or
168 supervision of the department or of any public or private agency with
169 which the department has contracted for the provision of services.

170 (b) At such time as a vacancy occurs in the position of the director of
171 the ombudsman office, but in no event later than January 1, 2009, the
172 director of the ombudsman office shall be appointed by the Governor,
173 with the approval of the General Assembly, in accordance with the
174 provisions of subsection (c) of this section. Said director shall be an
175 elector of the state with expertise and experience in the fields of mental
176 retardation and advocacy for the rights of the consumers specified in
177 subsection (a) of this section.

178 (c) The Governor shall appoint the director of the ombudsman office
179 from a list of candidates prepared and submitted to the Governor by

180 the Council on Mental Retardation, established by section 17a-270. The
181 Governor shall notify the council of the pending expiration of the term
182 of an incumbent ombudsman not less than ninety days prior to the
183 final day of the ombudsman's term in office. If a vacancy occurs in the
184 position of ombudsman, the Governor shall notify the council
185 immediately of the vacancy. The council shall meet to consider
186 qualified candidates for the position of ombudsman and shall submit a
187 list of not more than five candidates to the Governor ranked in order of
188 preference, not more than sixty days after receiving notice from the
189 Governor of the pending expiration of the ombudsman's term or the
190 occurrence of a vacancy. The Governor shall designate, not more than
191 sixty days after receipt of the list of candidates from the council, one
192 candidate from the list for the position of ombudsman. If, after the list
193 is submitted to the Governor by the council, any candidate withdraws
194 from consideration, the Governor shall designate a candidate from
195 those remaining on the list. If the Governor fails to designate a
196 candidate within sixty days of receipt of the list from the council, the
197 council shall refer the candidate with the highest ranking on the list to
198 the General Assembly for confirmation. If the General Assembly is not
199 in session at the time of the Governor's or council's designation of a
200 candidate, the candidate shall serve as the acting ombudsman until the
201 General Assembly meets and confirms the candidate as ombudsman.
202 A candidate serving as acting ombudsman shall be entitled to
203 compensation and have all the powers, duties and privileges of the
204 ombudsman. An ombudsman shall serve a term of four years, not
205 including any time served as acting ombudsman, and may be
206 reappointed by the Governor or shall remain in the position until a
207 successor is confirmed. Although an incumbent ombudsman may be
208 reappointed, the Governor shall also consider additional candidates
209 from a list submitted by the council as provided in this section.

210 [(b)] (d) The director of the [ombudsperson] ombudsman office shall
211 report monthly to the Council on Mental Retardation [established by
212 section 17a-270 and by December 15, 1999,] and, in accordance with the
213 provisions of section 11-4a, annually [thereafter,] to the joint standing
214 committee of the General Assembly having cognizance of matters

215 relating to public health.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>July 1, 2004</i>
Sec. 3	<i>from passage</i>
Sec. 4	<i>July 1, 2004</i>

PH *Joint Favorable Subst.*

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:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect
Department of Mental Retardation	See Below
Department of Children & Families	See Below

Municipal Impact: None

Explanation

The bill makes changes to the validity of a license issued to a residential facility by the Departments of Mental Retardation (DMR) and Children and Families (DCF) upon change of use. The bill also makes changes to the authority of appointment to the DMR Ombudsman.

Currently, DMR does issue licenses to residential facilities that provide lodging, care or treatment of persons with mental retardation or autistic persons. It is unclear how the provisions of the bill will be implemented and what variance from current DMR licensure, contractual and funding practices for residential facilities will result.

The fiscal impact associated with Section 3 of the bill is uncertain as it relates to DCF. Since the bill neither defines "change in use," nor specifies the process by which such a change would be determined to have occurred, it is unclear how a child caring facility license would be deemed invalid.

The DCF currently licenses private organizations operating twenty-two group homes (including two maternity homes), twenty-three residential treatment facilities, eighteen temporary shelters and five permanent family residences. It enters into contracts with the majority of these organizations for the provision of services to children and

youth placed by the agency. Each such contract states that any program change - which may include, but not be limited to: (a) an increase in population, (b) changes in client's acuity, (c) change in gender of clients, or (d) a shift from caring for children with physical disabilities to those with behavioral issues - must obtain prior approval from the department. Private agencies seeking to make programmatic changes are currently required to submit written information concerning the proposed modifications to DCF for consideration by its licensure staff, which has authority to recommend that the request be denied if the proposal is not consistent with agency regulations.

Additionally, since DCF is the principal financial supporter of most of these facilities it is anticipated that any significant programmatic changes would presently only be pursued with the department's foreknowledge and consent.

Finally, section 4 of the bill makes changes in the appointing authority of the DMR Ombudsman and will not result in a fiscal impact.

OLR BILL ANALYSIS

sSB 521

AN ACT CONCERNING STATE LICENSING FOR CHANGE OF USE OF GROUP HOMES**SUMMARY:**

The law requires most residential facilities in Connecticut for the lodging, care, or treatment of mentally retarded and autistic people to obtain a license from the Department of Mental Retardation (DMR). This bill makes that license invalid when the facility's use changes from those purposes and requires the facility to file an application for a new license with the appropriate state agency, as the new proposed use determines. It also makes a license the Department of Children and Families (DCF) commissioner issues for a DCF home or residential care facility invalid upon the facility's change of use. DMR homes or facilities must file an application for a new license with the appropriate state agency, as the new proposed use determines.

The bill transfers to the governor from the DMR commissioner authority to appoint the director of DMR's Ombudsman Office. It requires the General Assembly to approve the governor's appointee, sets qualifications for the position, and establishes a candidate selection and appointment process.

EFFECTIVE DATE: Upon passage, except for the ombudsman provisions, which take effect July 1, 2004.

DMR OMBUDSMAN***Establishing the Ombudsman Office and Ombudsman Qualifications***

The bill explicitly establishes the DMR Ombudsman Office in statute, removing the existing requirement that the DMR commissioner establish one. The office receives complaints from individuals under the care or supervision of DMR or any agency with which it contracts for services and recommends solutions to the commissioner. The bill requires the ombudsman to be a Connecticut voter with expertise and

experience in mental retardation and advocating for the rights of DMR consumers.

Appointment Process

The bill transfers authority to appoint the ombudsman when a vacancy exists or beginning January 1, 2009, whichever occurs first, from the DMR commissioner to the governor and requires the General Assembly to approve the appointment. This removes the position from classified service. The bill establishes a process for submitting candidates to the governor and a timetable for nomination.

The bill requires the governor to notify the Council on Mental Retardation at least 90 days before the end of an ombudsman's term or immediately when a vacancy occurs. Within 60 days of this notice, the council must submit a list of up to five qualified candidates to the governor. He must choose a nominee within 60 days of receiving the list. If he does not, the council refers its top candidate on the list to the legislature for confirmation.

If a candidate withdraws, the governor must choose another nominee from the council's list. If the legislature is not in session when an individual is chosen, the nominee serves as acting ombudsman with all the powers, duties, privileges, and compensation of the office until it meets and confirms him. The ombudsman serves for a term of four years (not including time in an acting capacity). An ombudsman may be reappointed, but the governor must still consider candidates on the council's list. An ombudsman can remain in office until a successor is confirmed.

BACKGROUND

Council on Mental Retardation

The governor and legislative leaders appoint this 13-member council. It is composed mainly of DMR consumers and parents and guardians of people with mental retardation and also includes a physician and a trustee of the Southbury Training School. It advises the commissioner on state programs for people with retardation and recommends relevant legislation.

Legislative History

On April 6, the Senate referred this bill to the Public Health Committee, which added the ombudsman provisions and favorably reported the bill on April 13.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute
Yea 17 Nay 0

Public Health Committee

Joint Favorable Substitute
Yea 18 Nay 4