



Senate

General Assembly

File No. 411

January Session, 2005

Substitute Senate Bill No. 1094

Senate, April 19, 2005

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 A HEARING PROCESS FOR PRIORITY DETERMINATION OF DEPARTMENT OF MENTAL RETARDATION CLIENTS WHO ARE ON THE WAITING LIST FOR RESIDENTIAL PLACEMENT AND SERVICES.

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

1 Section 1. Section 17a-210 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 (a) There shall be a Department of Mental Retardation. The
4 Department of Mental Retardation, with the advice of a Council on
5 Mental Retardation, shall be responsible for the planning,
6 development and administration of complete, comprehensive and
7 integrated state-wide services for persons with mental retardation and
8 persons medically diagnosed as having Prader-Willi syndrome. The
9 Department of Mental Retardation shall be under the supervision of a
10 Commissioner of Mental Retardation, who shall be appointed by the
11 Governor in accordance with the provisions of sections 4-5 to 4-8,
12 inclusive. The Council on Mental Retardation may advise the

13 Governor on the appointment. The commissioner shall be a person
14 who has background, training, education or experience in
15 administering programs for the care, training, education, treatment
16 and custody of persons with mental retardation. The commissioner
17 shall be responsible, with the advice of the council, for: (1) Planning
18 and developing complete, comprehensive and integrated state-wide
19 services for persons with mental retardation; (2) the implementation
20 and where appropriate the funding of such services; and (3) the
21 coordination of the efforts of the Department of Mental Retardation
22 with those of other state departments and agencies, municipal
23 governments and private agencies concerned with and providing
24 services for persons with mental retardation. The commissioner shall
25 be responsible for the administration and operation of the state
26 training school, state mental retardation regions and all state-operated
27 community-based residential facilities established for the diagnosis,
28 care and training of persons with mental retardation. The
29 commissioner shall be responsible for establishing standards,
30 providing technical assistance and exercising the requisite supervision
31 of all state-supported residential, day and program support services
32 for persons with mental retardation and work activity programs
33 operated pursuant to section 17a-226. The commissioner shall conduct
34 or monitor investigations into allegations of abuse and neglect and file
35 reports as requested by state agencies having statutory responsibility
36 for the conduct and oversight of such investigations. In the event of the
37 death of a person with mental retardation for whom the department
38 has direct or oversight responsibility for medical care, the
39 commissioner shall ensure that a comprehensive and timely review of
40 the events, overall care, quality of life issues and medical care
41 preceding such death is conducted by the department and shall, as
42 requested, provide information and assistance to the Independent
43 Mortality Review Board established by Executive Order No. 25 of
44 Governor John G. Rowland. The commissioner shall report to the
45 board and the board shall review any death: (A) Involving an
46 allegation of abuse or neglect; (B) for which the Office of Chief Medical
47 Examiner or local medical examiner has accepted jurisdiction; (C) in

48 which an autopsy was performed; (D) which was sudden and
49 unexpected; or (E) in which the commissioner's review raises questions
50 about the appropriateness of care. The commissioner shall stimulate
51 research by public and private agencies, institutions of higher learning
52 and hospitals, in the interest of the elimination and amelioration of
53 retardation and care and training of persons with mental retardation.

54 (b) The commissioner shall be responsible for the development of
55 criteria as to the eligibility of any person with mental retardation for
56 residential care in any public or state-supported private institution
57 and, after considering the recommendation of a properly designated
58 diagnostic agency, may assign such person to a public or state-
59 supported private institution. The commissioner may transfer such
60 persons from one such institution to another when necessary and
61 desirable for their welfare, provided such person and such person's
62 parent, conservator, guardian or other legal representative receive
63 written notice of their right to object to such transfer at least ten days
64 prior to the proposed transfer of such person from any such institution
65 or facility. Such prior notice shall not be required when transfers are
66 made between residential units within the training school or a state
67 mental retardation region or when necessary to avoid a serious and
68 immediate threat to the life or physical or mental health of such person
69 or others residing in such institution or facility. The notice required by
70 this subsection shall notify the recipient of his or her right to object to
71 such transfer, except in the case of an emergency transfer as provided
72 in this subsection, and shall include the name, address and telephone
73 number of the Office of Protection and Advocacy for Persons with
74 Disabilities. In the event of an emergency transfer, the notice required
75 by this subsection shall notify the recipient of his or her right to
76 request a hearing in accordance with subsection (c) of this section and
77 shall be given within ten days following the emergency transfer. In the
78 event of an objection to the proposed transfer, the commissioner shall
79 conduct a hearing in accordance with subsection (c) of this section and
80 the transfer shall be stayed pending final disposition of the hearing,
81 provided no such hearing shall be required if the commissioner
82 withdraws such proposed transfer.

83 (c) [The] Any person with mental retardation who is eighteen years
84 of age or older and who resides at any institution or facility operated
85 by the Department of Mental Retardation, or the parent, guardian,
86 conservator or other legal representative of any person with mental
87 retardation who resides at any [institution or facility operated by the
88 Department of Mental Retardation, or any person with mental
89 retardation himself or herself, who is eighteen years of age or older
90 and who resides at any] such institution or facility, may object to any
91 transfer of such person from one institution or facility to another for
92 any reason other than a medical reason or an emergency, or may
93 request such a transfer. In the event of any such objection or request,
94 the commissioner shall conduct a hearing on such proposed transfer,
95 provided no such hearing shall be required if the commissioner
96 withdraws such proposed transfer. In any such transfer hearing, the
97 proponent of a transfer shall have the burden of showing, by clear and
98 convincing evidence, that the proposed transfer is in the best interest
99 of the resident being considered for transfer and that the facility and
100 programs to which transfer is proposed (1) are safe and effectively
101 supervised and monitored, and (2) provide a greater opportunity for
102 personal development than the resident's present setting. Such hearing
103 shall be conducted in accordance with the provisions of chapter 54.

104 (d) [The] Any person, or the parent, guardian, conservator or other
105 legal representative of [a] such person, [or the person himself or
106 herself,] may request a hearing for any final determination by the
107 department [which] that denies such person eligibility for programs
108 and services of the department. A request for a hearing shall be made
109 in writing to the commissioner. Such hearing shall be conducted in
110 accordance with the provisions of chapter 54.

111 (e) Any person with mental retardation, or the parent, guardian,
112 conservator or other legal representative of such person, may request a
113 hearing to contest the priority assignment made by the department for
114 persons seeking residential placement, residential services or
115 residential support. A request for hearing shall be made, in writing, to
116 the commissioner. Such hearing shall be conducted in accordance with

117 the provisions of chapter 54.

118 [(e) The] (f) Any person with mental retardation or the parent,
 119 guardian, conservator or other legal representative of [a] such person,
 120 [or the person himself or herself,] may object to (1) a proposed
 121 approval by the department of a program for such person [which] that
 122 includes the use of behavior-modifying medications or aversive
 123 procedures, or (2) a proposed determination of the department that
 124 community placement is inappropriate for such person placed under
 125 the direction of the commissioner. The department shall provide
 126 written notice of any such proposed approval or determination to the
 127 person, or to the parent, guardian, conservator or other legal
 128 representative of such person, [or the person himself or herself,] at
 129 least ten days prior to making such approval or determination. In the
 130 event of an objection to such proposed approval or determination, the
 131 commissioner shall conduct a hearing in accordance with the
 132 provisions of chapter 54, provided no such hearing shall be required if
 133 the commissioner withdraws such proposed approval or
 134 determination.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2005	17a-210

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	FY 06 \$	FY 07 \$
Department of Mental Retardation	GF - Cost	Potential Minimal	Potential Minimal
Office of the Attorney General and Judicial Department	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill establishes a hearing process for contesting a priority assignment for residential services given by the Department of Mental Retardation. There are an estimated 1,098 individuals on the department waiting list (categorized as Emergency or Priority 1), in addition there are over 1,400 individuals categorized as Priority 2 or 3 and on the department planning list. The department currently has an informal procedure for appealing a priority status and the bill would formalize this to an administrative hearing. To the extent that department staff are utilized (as is current practice for some existing administrative hearings), a minimal workload increase may result but would vary depending on the actual number of hearing requests. The department may incur a minimal cost as a result of the administrative hearings and any potential appeals.

The Office of Attorney General and the Judicial Department could accommodate the potential workload increase related to administrative appeals under the bill without requiring additional appropriations.

OLR Bill Analysis

sSB 1094

AN ACT CONCERNING A HEARING PROCESS FOR PRIORITY DETERMINATION OF DEPARTMENT OF MENTAL RETARDATION CLIENTS WHO ARE ON THE WAITING LIST FOR RESIDENTIAL PLACEMENT AND SERVICES**SUMMARY:**

This bill establishes a hearing process for people to contest Department of Mental Retardation (DMR) decisions assigning priority for residential placement, services, or support. It allows anyone with mental retardation, or their parent, guardian, conservator, or other legal representative, to ask the commissioner in writing for a hearing on such an assignment. The hearing must be held in accordance with the Uniform Administrative Procedures Act, which permits a person to present evidence, examine witnesses, and appeal to Superior Court if aggrieved by a final decision.

EFFECTIVE DATE: October 1, 2005

BACKGROUND***ARC/Connecticut v. O'Meara Settlement Agreement***

This recent settlement agreement, which resulted from a class action lawsuit involving people on DMR's waiting list, designates four priority levels: "E" for people needing immediate placement, services, and supports; "I" for people needing such help within one year; "II" for people who potentially need such help within two to five years; and "III" for people who potentially need such help more than five years in the future. The agreement calls for DMR to give priority for residential habilitation services to people designated as "E" and "I."

The agreement requires the Department of Social Services to conduct hearings on priority assignment determinations.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 26 Nay 0