



General Assembly

**Substitute Bill No. 1094**

January Session, 2005

\* SB01094JUD\_\_050205\_\_ \*

**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 Section 17a-210 of the general statutes is repealed and the  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.*

**JUD**           *Joint Favorable*