



House Bill No. 7008

Public Act No. 07-238

AN ACT CONCERNING THE DEPARTMENT OF MENTAL RETARDATION.

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

Section 1. Section 17a-212 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) On or before September 30, 1991, the Commissioner of Mental Retardation shall adopt regulations, in accordance with the provisions of chapter 54, establishing (1) criteria for (A) determining eligibility for services provided by the department, (B) determining which clients shall receive a specific service, and (C) selecting private sector service providers, and (2) uniform procedures to be used by the regional offices in determining which clients shall receive services and in selecting private sector service providers. Such procedures shall specify the decision-making authority of the department's central office and the regional offices and set parameters within which each shall operate.

(b) Each regional office, following a format developed by the department's central office and taking into account the regulations developed by the commissioner, shall prepare a written protocol to be used in determining which clients shall receive services and in

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selecting service providers. The protocol shall be approved by the commissioner.

[(c) The department shall evaluate each region's adherence to its approved protocol.]

Sec. 2. Section 17a-213 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

The department shall compare the regions with regard to such matters as staff to client ratios, cost per program type, cost per client for each type of service provided and gaps between persons served and persons requesting services. The department shall issue a report to the joint standing committees of the General Assembly having cognizance of matters relating to public health and appropriations and the budgets of state agencies at least annually which identifies and explains any discrepancies between regions. [and includes the results of the evaluation conducted pursuant to subsection (c) of section 17a-212.]

Sec. 3. Section 17a-218a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) The Commissioner of Mental Retardation shall continue the operation of the Southbury Training School and shall establish criteria to evaluate the current population of the training school in regard to community placement and training school placement. The criteria shall include, at a minimum, consideration of the client's age, physical disabilities, medical fragility, level of mental retardation, length of residence at the school and availability of an appropriate placement. [Not later than January 1, 1996, the commissioner shall report his findings to the joint standing committee of the General Assembly having cognizance of matters relating to public health, in accordance with section 11-4a.]

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(b) The commissioner shall no longer accept new admissions at the Southbury Training School.

(c) For the fiscal years ending June 30, 1998, and June 30, 1999, the commissioner shall not certify additional beds as immediate care facilities for the mentally retarded (ICFMR) at the Southbury Training School beyond a total of six hundred sixteen.

[(d) On October 1, 1997, and annually thereafter, the commissioner shall submit a report to the joint standing committees of the General Assembly having cognizance of matters relating to appropriations and budgets of state agencies and public health. The report shall describe the status of the reduction of the waiting list and the establishment of a Recreation and Respite Care Services Division, to the extent required by the appropriation of funds to the department, and shall include, but not be limited to, the manner in which funds have been or will be spent in meeting said requirements.]

Sec. 4. Section 17a-247b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) The Department of Mental Retardation shall establish and maintain a registry of individuals who have been terminated or separated from employment as a result of substantiated abuse or neglect. The department shall, for the purposes of maintaining the registry, be capable of responding to inquiries in accordance with subsection (c) of this section as to whether an individual has been terminated or separated from employment as a result of substantiated abuse or neglect. Such capability may include response by telephone voice mail or other automated response for initial inquiries.

(b) The registry shall include, but not be limited to, the following: (1) The names, addresses and Social Security numbers of those individuals terminated or separated from employment as a result of

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substantiated abuse or neglect; (2) the date of termination or separation; (3) the type of abuse or neglect; and (4) the name of any employer or authorized agency requesting information from the registry, the reason for the request and the date of the request.

(c) The department shall make information in the registry available only to: (1) Authorized agencies, for the purpose of protective service determinations; [or] (2) employers who employ individuals to provide services to a department client; or (3) the Departments of Children and Families and Mental Health and Addiction Services, for the purpose of determining whether an applicant for employment appears on the registry.

(d) The department shall limit responses to requests for identifying information from the registry established under this section to (1) identification of the individual terminated or separated from employment for substantiated abuse or neglect, and (2) the type of abuse or neglect so substantiated.

(e) Not later than five business days following receipt of written notification by an authorized agency of the substantiation of abuse or neglect by an employee who has been terminated or separated from employment for such abuse or neglect, an employer shall submit to the department the name of such employee and such other information as the department may request. Upon receipt of notification of such termination or separation, the department shall conduct a hearing in accordance with sections 4-177 to 4-181a, inclusive, governing contested cases. The department shall not place an individual's name on the registry until the department has completed the hearing and the hearing has resulted in a decision to place the individual's name on the registry.

(f) The department shall remove an employee's name from the registry if an arbitration or a legal proceeding results in a finding that

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the employee was unfairly terminated from employment.

(g) No employer shall be liable in any civil action for damages brought by an employee or an applicant for employment whose name appears on the registry established by this section arising out of the conduct of the employer in (1) making any report in good faith pursuant to subsection (e) of this section, (2) testifying under oath in any administrative or judicial proceeding arising from such report, (3) refusing to hire or to retain any individual whose name appears on the registry established under this section, or (4) taking any other action to conform to the requirements of this section. The immunity provided in this subsection shall not apply to gross negligence or to wilful or wanton misconduct.

Sec. 5. Section 17a-271 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) The board of trustees of the training school shall consist of seven members, who shall serve without compensation except for reimbursement for necessary expenses incurred in performing their duties. On the expiration of the term of each member, the Governor shall appoint a member for a term of four years. The board of trustees shall establish rules of procedure for the conduct of its business.

(b) The board of trustees shall recommend to the council such matters as it deems necessary; shall advise the director of the institution on general policies concerning the operation and administration of the institution; and shall inspect such institution annually. [; shall review the annual report of the director of the training school and in cooperation with the director prepare annually a report on the status, operation and administration of the institution and shall transmit the same to the Council on Mental Retardation for inclusion in a report to the Governor.]

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Sec. 6. Section 45a-676 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) If the court finds, by clear and convincing evidence, that the respondent is, by reason of the severity of [his] the respondent's mental retardation, totally unable to meet essential requirements for [his] the respondent's physical health or safety and totally unable to make informed decisions about matters related to [his] the respondent's care, the court shall appoint a plenary guardian or plenary coguardians of the person with mental retardation who shall have all those powers and duties provided for in section 45a-677.

(b) If the court finds by clear and convincing evidence that the respondent is able to do some, but not all, of the tasks necessary to meet essential requirements for [his] the respondent's physical health or safety or that the respondent is able to make some, but not all, informed decisions about matters related to [his] the respondent's care, the court shall appoint a limited guardian or limited coguardians of the person with mental retardation.

(c) For the purposes of sections 45a-669 to 45a-684, inclusive, and 46b-38ii, any alleged inability of the respondent must be evidenced by recent behavior [which] that would cause harm or create a risk of harm, by clear and convincing proof.

(d) The court shall take from any such plenary guardian or limited guardian a written acceptance of such guardianship and, if the court deems it necessary for the protection of the respondent, a probate bond.

(e) The court shall make written findings of fact [which] that support each grant of authority to the plenary guardian or limited guardian. If the court in reaching its conclusion is relying on incidents of behavior [which] that occurred more than six months prior to the

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date of hearing, the court findings shall include its reasoning for relying upon such incidents.

(f) In selecting a plenary guardian or limited guardian of the person with mental retardation, the court shall be guided by the best interests of the respondent, including, but not limited to, the preference of the respondent as to who should be appointed as plenary guardian or limited guardian.

(g) No person shall be excluded from serving as a plenary guardian or limited guardian solely because such person is employed by the Department of Mental Retardation, except that (1) no such employee may be appointed as a plenary guardian or limited guardian of a person with mental retardation residing in a state-operated residential facility for persons with mental retardation located in the Department of Mental Retardation region in which such person is employed; and (2) no such employee shall be so appointed unless no other suitable person to serve as plenary guardian or limited guardian can be found. Any appointment of an employee of the Department of Mental Retardation as a plenary guardian or limited guardian shall be made for a limited purpose and duration. During the term of appointment of any such employee, the Commissioner of Mental Retardation shall search for a suitable person who is not an employee of the department to replace such employee as plenary guardian or limited guardian.

(h) No person shall be excluded from serving as a plenary guardian or limited guardian solely because such person is employed by a private facility funded or licensed by the Department of Mental Retardation, except that (1) no such employee may be appointed as a plenary guardian or limited guardian of a person with mental retardation residing in a residential facility in which such employee is employed, and (2) no such employee shall be so appointed unless no other suitable person to serve as plenary guardian or limited guardian can be found.

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(i) No person shall be excluded from serving as a plenary guardian or limited guardian solely because such person is licensed by the Department of Mental Retardation to operate a community training home, except that (1) no such licensee, nor any of such licensee's relatives or household members, may be appointed as a plenary guardian or limited guardian of a person with mental retardation residing in a community training home operated by such licensee, and (2) no such licensee shall be so appointed unless no other suitable person to serve as plenary guardian or limited guardian can be found.

Sec. 7. Section 20 of public act 91-11 of the June special session is repealed and the following is substituted in lieu thereof (*Effective from passage*):

In determining the amount of payments to be paid by the state under section 17a-246 of the general statutes to any organization or facility which provides employment opportunities or day services, or services in a residential facility, for persons referred by the department of mental retardation, mental health or human services, or any other state agency, the total cost allowance for the salary of the director of such organization or facility shall not exceed [seventy-five thousand dollars] one hundred thousand dollars, except that after July 1, 2007, and annually thereafter, the cost allowance for the salary of the director may be increased by an amount not to exceed the percentage increase of any cost of living increase provided under the terms of the contract of the organization.

Sec. 8. Section 21 of public act 91-11 of the June special session is repealed and the following is substituted in lieu thereof (*Effective from passage*):

In determining the amount of any grant to be paid by the state, through the department of mental health, to any grantee organization authorized to provide services to mentally ill persons, the cost

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allowance for the salary of the director of such facility shall not exceed [seventy-five thousand dollars] one hundred thousand dollars, except that after July 1, 2007, and annually thereafter, the cost allowance for the salary of the director may be increased by an amount not to exceed the percentage increase of any cost of living increase provided under the terms of the contract of the grantee organization.

Sec. 9. Section 17a-283a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Notwithstanding any provision of the general statutes concerning the sale, lease or transfer of real property by or on behalf of the state, during the period commencing on ~~[July 1, 2005]~~ July 1, 2007, and ending on ~~[June 30, 2007]~~ June 30, 2009, no state-owned real property that is being used for residential purposes by persons with mental retardation may be sold, leased or transferred by or on behalf of the state. The provisions of this subsection shall not apply to any agreement for the sale, lease or transfer of any state-owned property entered into before June 2, 2005.

(b) Subsection (a) of this section shall only apply to any state-operated community-based residential facility, boarding house, group home or halfway house meeting the criteria set forth in subsection (a) of this section and occupied by persons with mental retardation, persons with psychiatric disabilities, alcohol-dependent persons or drug-dependent persons.

Sec. 10. Sections 17a-211a, 17a-211d, 17a-215a and 17a-242 of the general statutes are repealed. (*Effective October 1, 2007*)

Approved July 11, 2007