



# House of Representatives

General Assembly

**File No. 644**

*January Session, 2007*

House Bill No. 7008

*House of Representatives, April 30, 2007*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## ***AN ACT CONCERNING THE DEPARTMENT OF MENTAL RETARDATION.***

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

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 Section 17a-212 of the general statutes is repealed and the  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

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

14 (b) Each regional office, following a format developed by the  
15 department's central office and taking into account the regulations  
16 developed by the commissioner, shall prepare a written protocol to be  
17 used in determining which clients shall receive services and in  
18 selecting service providers. The protocol shall be approved by the  
19 commissioner.

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

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 Section 17a-213 of the general statutes is repealed and the  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

24 The department shall compare the regions with regard to such  
25 matters as staff to client ratios, cost per program type, cost per client  
26 for each type of service provided and gaps between persons served  
27 and persons requesting services. The department shall issue a report to  
28 the joint standing committees of the General Assembly having  
29 cognizance of matters relating to public health and appropriations and  
30 the budgets of state agencies at least annually which identifies and  
31 explains any discrepancies between regions. [and includes the results  
32 of the evaluation conducted pursuant to subsection (c) of section 17a-  
33 212.]

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

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

46 with section 11-4a.]

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

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

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

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

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

73 (b) The registry shall include, but not be limited to, the following: (1)  
74 The names, addresses and Social Security numbers of those  
75 individuals terminated or separated from employment as a result of  
76 substantiated abuse or neglect; (2) the date of termination or

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

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

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

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

104 (f) The department shall remove an employee's name from the  
105 registry if an arbitration or a legal proceeding results in a finding that  
106 the employee was unfairly terminated from employment.

107 (g) No employer shall be liable in any civil action for damages  
108 brought by an employee or an applicant for employment whose name

109 appears on the registry established by this section arising out of the  
110 conduct of the employer in (1) making any report in good faith  
111 pursuant to subsection (e) of this section, (2) testifying under oath in  
112 any administrative or judicial proceeding arising from such report, (3)  
113 refusing to hire or to retain any individual whose name appears on the  
114 registry established under this section, or (4) taking any other action to  
115 conform to the requirements of this section. The immunity provided in  
116 this subsection shall not apply to gross negligence or to wilful or  
117 wanton misconduct.

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

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

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

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

137 (a) If the court finds, by clear and convincing evidence, that the  
138 respondent is, by reason of the severity of [his] the respondent's  
139 mental retardation, totally unable to meet essential requirements for  
140 [his] the respondent's physical health or safety and totally unable to

141 make informed decisions about matters related to [his] the  
142 respondent's care, the court shall appoint a plenary guardian or  
143 plenary coguardians of the person with mental retardation who shall  
144 have all those powers and duties provided for in section 45a-677.

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

152 (c) For the purposes of sections 45a-669 to 45a-684, inclusive, and  
153 46b-38ii, any alleged inability of the respondent must be evidenced by  
154 recent behavior [which] that would cause harm or create a risk of  
155 harm, by clear and convincing proof.

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

160 (e) The court shall make written findings of fact [which] that  
161 support each grant of authority to the plenary guardian or limited  
162 guardian. If the court in reaching its conclusion is relying on incidents  
163 of behavior [which] that occurred more than six months prior to the  
164 date of hearing, the court findings shall include its reasoning for  
165 relying upon such incidents.

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

171 (g) No person shall be excluded from serving as a plenary guardian

172 or limited guardian solely because such person is employed by the  
173 Department of Mental Retardation, except that (1) no such employee  
174 may be appointed as a plenary guardian or limited guardian of a  
175 person with mental retardation residing in a state-operated residential  
176 facility for persons with mental retardation located in the Department  
177 of Mental Retardation region in which such person is employed; and  
178 (2) no such employee shall be so appointed unless no other suitable  
179 person to serve as plenary guardian or limited guardian can be found.  
180 Any appointment of an employee of the Department of Mental  
181 Retardation as a plenary guardian or limited guardian shall be made  
182 for a limited purpose and duration. During the term of appointment of  
183 any such employee, the Commissioner of Mental Retardation shall  
184 search for a suitable person who is not an employee of the department  
185 to replace such employee as plenary guardian or limited guardian.

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

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

204 Sec. 7. Sections 17a-211a, 17a-211d, 17a-215a and 17a-242 of the

205 general statutes and section 20 of public act 91-11 of the June special  
 206 session are repealed. (*Effective October 1, 2007*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	17a-212
Sec. 2	<i>October 1, 2007</i>	17a-213
Sec. 3	<i>October 1, 2007</i>	17a-218a
Sec. 4	<i>October 1, 2007</i>	17a-247b
Sec. 5	<i>October 1, 2007</i>	17a-271
Sec. 6	<i>October 1, 2007</i>	45a-676
Sec. 7	<i>October 1, 2007</i>	Repealer section

**PH**      *Joint Favorable C/R*

JUD

**JUD**      *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 chamber thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Departments of Mental Retardation, Children & Families and Mental Health & Addiction Services	GF - None	None	None

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill makes various changes that will not result in a fiscal impact to the Departments of Mental Retardation, Mental Health and Addiction Services and Children and Families.

One of the bill’s provisions removes a cost allowance cap for the salary of the director of private provider organizations that contract with the Department of Mental Retardation. This provision is not anticipated to result in increased costs to the department.

It should be noted that the contract value is at the discretion of the department and within available funding. Historically, the private provider increases, when included in the Appropriations Act, have been appropriated based on a percentage cost of living increase (COLA) on the contracted level. This bill does not impact the COLA, appropriation to the state agency or funding available for any contract. However, the bill may allow the director to receive a COLA (with the state funded dollars) if currently at the capped level, which may have otherwise been allocated to another cost within a provider’s contracted value.

***The Out Years***

There is no fiscal impact anticipated in the out-years.

**OLR Bill Analysis****HB 7008*****AN ACT CONCERNING THE DEPARTMENT OF MENTAL RETARDATION.*****SUMMARY:**

This bill prohibits a probate court from excluding people from being a plenary or limited guardian of a person with mental retardation solely because they (1) work for a private agency the Department of Mental Retardation (DMR) funds or licenses or (2) operate a DMR-licensed community training home.

It permits the Children and Families (DCF) and Mental Health and Addiction Services (DMHAS) departments to access DMR's abuse registry to check whether a job applicant is listed there. Finally, it repeals (1) a \$75,000 cost allowance cap for executive director salaries in DMR's calculations of grants to private agencies and (2) several reporting requirements, some of which are obsolete.

EFFECTIVE DATE: October 1, 2007

**PLENARY GUARDIANS**

Probate courts appoint plenary and limited guardians for people with mental retardation. A plenary guardian acts for someone who cannot take care of his or her physical health or safety or make informed decisions about it; a limited guardian acts for those who can take care of or make informed decisions about some, but not all, aspects of their health or safety. The bill prohibits a probate court from excluding someone from serving in these roles solely because he or she works for a private agency DMR licenses or funds or operates a DMR-licensed community training home. But it specifies that people:

1. cannot serve as guardians for individuals who live in the

residential facilities in which they work or the community training homes they operate (this latter prohibition extends to a training home operator's relatives and household members) and

2. can be appointed only if no other suitable person can be found to serve.

The law already prohibits excluding DMR employees from serving in these roles, with similar exceptions.

### **REPEALED REPORTS**

The bill repeals requirements that:

1. DMR evaluate and annually report to the Public Health and Appropriations committees on how each of its regions adheres to its (the region's) written protocol for selecting service providers and determining which clients receive services;
2. DMR report annually to the Public Health and Appropriations committees on the status of its waiting list and its establishment of a Recreation and Respite Care Division;
3. DMR annually submit to the Public Health and Appropriations committees a proposed spending plan for residential and day services;
4. DMR, DMHAS, and DCF provide technical support to private providers in reducing work-related injuries and report annually on resulting cost savings;
5. DMR annually report to the education commissioner on its evaluation of Unified School District # 3, which DMR operates as part of the Birth-to-Three system;
6. the Southbury Training School board of trustees annually review the school director's report and report to the Council on Mental Retardation on the school's status, operation, and administration; and

7. DMR report to the Public Health Committee by January 1, 1996 on criteria for placing Southbury Training School residents.

The bill also eliminates the Advisory Commission on Services and Supports for People with Developmental Disabilities, which produced its final report in July 2002.

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable Change of Reference  
Yea 27 Nay 0 (03/21/2007)

Judiciary Committee

Joint Favorable  
Yea 39 Nay 0 (04/13/2007)