



Senate

General Assembly

File No. 510

February Session, 2008

Substitute Senate Bill No. 417

Senate, April 7, 2008

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE ESTABLISHMENT OF THE FATALITY REVIEW BOARD.

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

1 Section 1. (NEW) (*Effective from passage*) (a) There is established a
2 Fatality Review Board for Persons with Disabilities. The fatality review
3 board shall investigate the circumstances surrounding the untimely
4 deaths of persons with disabilities, including the untimely deaths of all
5 clients under the care of the Department of Developmental Services,
6 that, in the opinion of the director of the Office of Protection and
7 Advocacy for Persons with Disabilities, warrant a full and
8 independent investigation. In addition, the fatality review board may
9 investigate the circumstances surrounding deaths as described in
10 subsection (b) of section 46a-11c of the 2008 supplement to the general
11 statutes. In order to facilitate a prompt investigation of the
12 circumstances surrounding the untimely death of a client under the
13 care of the Department of Developmental Services, said director may
14 refer a particular case to the fatality review board prior to the

15 completion of a review conducted by the Independent Mortality
16 Review Board pursuant to the provisions of section 17a-210 of the 2008
17 supplement to the general statutes, as amended by this act.

18 (b) On and after July 1, 2008, the Fatality Review Board for Persons
19 with Disabilities shall consist of the following members: The director
20 of the Office of Protection and Advocacy for Persons with Disabilities,
21 the Chief State's Attorney or his designee, one member appointed by
22 the Governor who shall be a law enforcement professional with a
23 background in forensic investigations, one member appointed by the
24 president pro tempore of the Senate who shall be a mental health
25 professional, one member appointed by the majority leader of the
26 Senate who shall be a forensic pathologist, one member appointed by
27 the minority leader of the Senate who shall be a medical professional,
28 one member appointed by the speaker of the House of Representatives
29 who shall be a developmental disabilities professional, one member
30 appointed by the majority leader of the House of Representatives who
31 shall be a person with disabilities or a family member of a person with
32 disabilities, and one member appointed by the minority leader of the
33 House of Representatives who shall be a medical professional. Any
34 vacancy on the fatality review board shall be filled by the appointing
35 authority. The Commissioner of Developmental Services or the
36 commissioner's designee shall serve as a nonvoting liaison to the
37 fatality review board. The director of the Office of Protection and
38 Advocacy for Persons with Disabilities shall serve as chairperson of the
39 fatality review board and may assign agency staff and, within
40 available appropriations, hire consultants with expertise as necessary
41 to assist the board in the completion of its investigation. The terms of
42 the four members of the fatality review board appointed by the
43 Governor pursuant to Executive Order No. 25 of Governor John G.
44 Rowland, serving on the effective date of this section, shall expire on
45 July 1, 2008.

46 (c) In accordance with section 46a-13a of the general statutes, all
47 relevant state, local or private agencies shall cooperate and assist the
48 fatality review board in the performance of its statutory duties.

49 (d) On or before February 1, 2009, and annually thereafter, the
50 fatality review board shall report, in accordance with section 11-4a of
51 the general statutes, on its investigations to the Governor, and to the
52 joint standing committees of the General Assembly having cognizance
53 of matters relating to human services and public health.

54 Sec. 2. Section 17a-210 of the 2008 supplement to the general statutes
55 is repealed and the following is substituted in lieu thereof (*Effective*
56 *from passage*):

57 (a) There shall be a Department of Developmental Services. The
58 Department of Developmental Services, with the advice of a Council
59 on Mental Retardation, shall be responsible for the planning,
60 development and administration of complete, comprehensive and
61 integrated state-wide services for persons with mental retardation and
62 persons medically diagnosed as having Prader-Willi syndrome. The
63 Department of Developmental Services shall be under the supervision
64 of a Commissioner of Developmental Services, who shall be appointed
65 by the Governor in accordance with the provisions of sections 4-5 to 4-
66 8, inclusive. The Council on Mental Retardation may advise the
67 Governor on the appointment. The commissioner shall be a person
68 who has background, training, education or experience in
69 administering programs for the care, training, education, treatment
70 and custody of persons with mental retardation. The commissioner
71 shall be responsible, with the advice of the council, for: (1) Planning
72 and developing complete, comprehensive and integrated state-wide
73 services for persons with mental retardation; (2) the implementation
74 and where appropriate the funding of such services; and (3) the
75 coordination of the efforts of the Department of Developmental
76 Services with those of other state departments and agencies, municipal
77 governments and private agencies concerned with and providing
78 services for persons with mental retardation. The commissioner shall
79 be responsible for the administration and operation of the state
80 training school, state mental retardation regions and all state-operated
81 community-based residential facilities established for the diagnosis,
82 care and training of persons with mental retardation. The

83 commissioner shall be responsible for establishing standards,
84 providing technical assistance and exercising the requisite supervision
85 of all state-supported residential, day and program support services
86 for persons with mental retardation and work activity programs
87 operated pursuant to section 17a-226 of the 2008 supplement to the
88 general statutes. [The commissioner shall conduct or monitor
89 investigations into allegations of abuse and neglect and file reports as
90 requested by state agencies having statutory responsibility for the
91 conduct and oversight of such investigations. In the event of the death
92 of a person with mental retardation for whom the department has
93 direct or oversight responsibility for medical care, the commissioner
94 shall ensure that a comprehensive and timely review of the events,
95 overall care, quality of life issues and medical care preceding such
96 death is conducted by the department and shall, as requested, provide
97 information and assistance to the Independent Mortality Review Board
98 established by Executive Order No. 25 of Governor John G. Rowland.
99 The commissioner shall report to the board and the board shall review
100 any death: (A) Involving an allegation of abuse or neglect; (B) for
101 which the Office of Chief Medical Examiner or local medical examiner
102 has accepted jurisdiction; (C) in which an autopsy was performed; (D)
103 which was sudden and unexpected; or (E) in which the commissioner's
104 review raises questions about the appropriateness of care.] The
105 commissioner shall stimulate research by public and private agencies,
106 institutions of higher learning and hospitals, in the interest of the
107 elimination and amelioration of retardation and care and training of
108 persons with mental retardation.

109 (b) The commissioner shall conduct or monitor investigations into
110 allegations of abuse and neglect and file reports as requested by state
111 agencies having statutory responsibility for the conduct and oversight
112 of such investigations. In the event of the death of a person with
113 mental retardation for whom the department has direct or oversight
114 responsibility for medical care, the commissioner shall: (1) Report such
115 death to the Office of Protection and Advocacy for Persons with
116 Disabilities, and (2) ensure that a comprehensive and timely review of
117 the events, overall care, quality of life issues and medical care

118 preceding such death is conducted by the department and shall, as
119 requested, provide information and assistance to the Independent
120 Mortality Review Board, established by Executive Order No. 25 of
121 Governor John G. Rowland. The commissioner shall report to said
122 board and said board shall review any death: (A) Involving an
123 allegation of abuse or neglect; (B) for which the Office of Chief Medical
124 Examiner or local medical examiner has accepted jurisdiction; (C) in
125 which an autopsy was performed; (D) which was sudden and
126 unexpected; or (E) in which the commissioner's review raises questions
127 about the appropriateness of care.

128 [(b)] (c) The commissioner shall be responsible for the development
129 of criteria as to the eligibility of any person with mental retardation for
130 residential care in any public or state-supported private institution
131 and, after considering the recommendation of a properly designated
132 diagnostic agency, may assign such person to a public or state-
133 supported private institution. The commissioner may transfer such
134 persons from one such institution to another when necessary and
135 desirable for their welfare, provided such person and such person's
136 parent, conservator, guardian or other legal representative receive
137 written notice of their right to object to such transfer at least ten days
138 prior to the proposed transfer of such person from any such institution
139 or facility. Such prior notice shall not be required when transfers are
140 made between residential units within the training school or a state
141 mental retardation region or when necessary to avoid a serious and
142 immediate threat to the life or physical or mental health of such person
143 or others residing in such institution or facility. The notice required by
144 this subsection shall notify the recipient of his or her right to object to
145 such transfer, except in the case of an emergency transfer as provided
146 in this subsection, and shall include the name, address and telephone
147 number of the Office of Protection and Advocacy for Persons with
148 Disabilities. In the event of an emergency transfer, the notice required
149 by this subsection shall notify the recipient of his or her right to
150 request a hearing in accordance with subsection [(c)] (d) of this section
151 and shall be given within ten days following the emergency transfer.
152 In the event of an objection to the proposed transfer, the commissioner

153 shall conduct a hearing in accordance with subsection [(c)] (d) of this
154 section and the transfer shall be stayed pending final disposition of the
155 hearing, provided no such hearing shall be required if the
156 commissioner withdraws such proposed transfer.

157 [(c)] (d) Any person with mental retardation who is eighteen years
158 of age or older and who resides at any institution or facility operated
159 by the Department of Developmental Services, or the parent, guardian,
160 conservator or other legal representative of any person with mental
161 retardation who resides at any such institution or facility, may object to
162 any transfer of such person from one institution or facility to another
163 for any reason other than a medical reason or an emergency, or may
164 request such a transfer. In the event of any such objection or request,
165 the commissioner shall conduct a hearing on such proposed transfer,
166 provided no such hearing shall be required if the commissioner
167 withdraws such proposed transfer. In any such transfer hearing, the
168 proponent of a transfer shall have the burden of showing, by clear and
169 convincing evidence, that the proposed transfer is in the best interest
170 of the resident being considered for transfer and that the facility and
171 programs to which transfer is proposed (1) are safe and effectively
172 supervised and monitored, and (2) provide a greater opportunity for
173 personal development than the resident's present setting. Such hearing
174 shall be conducted in accordance with the provisions of chapter 54.

175 [(d)] (e) Any person, or the parent, guardian, conservator or other
176 legal representative of such person, may request a hearing for any final
177 determination by the department that denies such person eligibility for
178 programs and services of the department. A request for a hearing shall
179 be made in writing to the commissioner. Such hearing shall be
180 conducted in accordance with the provisions of chapter 54.

181 [(e)] (f) Any person with mental retardation, or the parent, guardian,
182 conservator or other legal representative of such person, may request a
183 hearing to contest the priority assignment made by the department for
184 persons seeking residential placement, residential services or
185 residential support. A request for hearing shall be made, in writing, to

186 the commissioner. Such hearing shall be conducted in accordance with
187 the provisions of chapter 54.

188 ~~[(f)]~~ (g) Any person with mental retardation or the parent, guardian,
189 conservator or other legal representative of such person, may object to
190 (1) a proposed approval by the department of a program for such
191 person that includes the use of behavior-modifying medications or
192 aversive procedures, or (2) a proposed determination of the
193 department that community placement is inappropriate for such
194 person placed under the direction of the commissioner. The
195 department shall provide written notice of any such proposed
196 approval or determination to the person, or to the parent, guardian,
197 conservator or other legal representative of such person, at least ten
198 days prior to making such approval or determination. In the event of
199 an objection to such proposed approval or determination, the
200 commissioner shall conduct a hearing in accordance with the
201 provisions of chapter 54, provided no such hearing shall be required if
202 the commissioner withdraws such proposed approval or
203 determination.

204 Sec. 3. Subsection (l) of section 17a-274 of the 2008 supplement to the
205 general statutes is repealed and the following is substituted in lieu
206 thereof (*Effective from passage*):

207 (l) In the event that any person placed under the provisions of this
208 section is recommended for transfer by the Department of
209 Developmental Services, the department shall proceed as required by
210 subsection ~~[(c)]~~ (d) of section 17a-210 of the 2008 supplement to the
211 general statutes, as amended by this act, and shall in addition notify
212 the probate court which made the placement.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	17a-210
Sec. 3	<i>from passage</i>	17a-274(l)

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:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Department of Developmental Services; and Office of Protection and Advocacy for Persons with Disabilities	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill codifies, with changes, the Fatality Review Board for Persons with Disabilities, as established in Executive Order 25 in February 2002. The bill further codifies the reporting of deaths of people under the care of the Department of Developmental Services, to the Office of Protection for Persons with Disabilities. These provisions implement current practice and therefore have no fiscal impact.

The Out Years

There is no fiscal impact in the out years.

OLR Bill Analysis**sSB 417*****AN ACT CONCERNING THE ESTABLISHMENT OF THE FATALITY REVIEW BOARD.*****SUMMARY:**

This bill codifies, with changes, the Fatality Review Board (FRB) for Persons with Disabilities, which was created by Executive Order 25 in February 2002. The bill's nine-member board must investigate the circumstances surrounding untimely deaths of people with disabilities when the director of the Office of Protection and Advocacy for Persons with Disabilities (OPA) determines it is warranted.

The FRB must report on its investigations by February 1, 2009, and annually thereafter, to the governor and the Human Services and Public Health committees. Executive Order 25 requires annual reports to the governor and the Public Health Committee (see BACKGROUND).

EFFECTIVE DATE: Upon passage

FATALITY REVIEW BOARD***Membership***

Beginning July 1, 2008, the the FRB members, under the bill, are: (1) the OPA director; (2) the chief state's attorney, or his designee; and (3) seven additional members appointed as indicated:

<i>Member</i>	<i>Appointing Authority</i>
Law enforcement professional with forensics background	Governor
Mental health professional	Senate president pro tempore

Forensic pathologist	Senate majority leader
Medical professional	Senate minority leader
Developmental disabilities professional	House speaker
Person with disabilities or family member of someone with disabilities	House majority leader
Medical professional	House minority leader

The Department of Developmental Services (DDS) commissioner or his designee serves as a nonvoting liaison to the FRB. The OPA director is the FRB chairperson and can assign agency staff and hire experts to help the board investigate.

Executive Order 25 requires a six-person board, comprising the OPA director, the chief state's attorney, and four members the governor appoints (one law enforcement professional with a forensic investigations background, one mental retardation professional, and two medical professionals). The bill provides that the terms of the four gubernatorial appointees serving when the bill passes expire on July 1, 2008.

Authority and Mandate to Investigate When Abuse or Neglect Suspected

In addition to its mandate to review referrals from OPA, the bill allows the FRB to investigate deaths of people for whom DDS has direct oversight responsibility for medical care and whose deaths DDS believed were caused by abuse or neglect.

Current law requires the DDS commissioner to notify OPA within 24 hours after these deaths occur, and OPA generally must investigate to determine whether abuse or neglect occurred. Its investigations

follow protocols it establishes in consultation with the DDS commissioner.

DDS Mandate to Report Certain Deaths

The bill requires DDS, whenever someone dies for whom it has direct or oversight responsibility for medical care, to report the death to OPA, regardless of whether abuse or neglect is suspected. Executive Order 25 directs DDS to make these reports.

By law, DDS must conduct its own investigations when such deaths occur and provide information and assistance to the Independent Mortality Review Board (IMRB).

Referrals to FRB Before Independent Mortality Review Board Completes Investigation

To facilitate prompt investigations of untimely deaths of DDS clients, the bill allows the OPA director to refer cases to the FRB before the IMRB, also established in Executive Order 25, finishes its review of medical care and other circumstances surrounding DDS client deaths. This authority already exists in the executive order.

The IMRB investigates deaths when either the DDS commissioner or OPA director believes the deaths were caused by abuse and neglect or when it determines that a thorough review of the quality of care and other circumstances surrounding the death is warranted.

The IMRB has not been codified but part of its charge has.

Obligation to Assist With Investigations

The bill requires all relevant state, local, or private agencies to cooperate and assist the FRB in performing its duties, in accordance with the law that requires them to cooperate with OPA in its investigations, including releasing client records with the client's consent.

By law, DDS must provide information and assistance to the IMRB, when asked. The bill requires DDS to do this for the FRB.

BACKGROUND***Executive Order 25***

In February 2002, Governor Rowland issued Executive Order No. 25, largely in response to a number of untimely deaths of Department of Mental Retardations (DMR, now DDS) clients living in community living arrangements. The order required DMR to report to OPA all deaths of persons it placed or treated under the commissioner's direction, regardless of whether abuse or neglect was suspected.

It also established an Independent Mortality Review Board to review the medical care and other circumstances surrounding these deaths when either the DMR commissioner or OPA director believed the deaths were caused by abuse or neglect, or the board otherwise believed it was warranted.

Finally, it created a Fatality Review Board for Persons with Disabilities to investigate deaths that, in the OPA director's opinion, warranted a full and independent investigation, which could include individuals with other disabilities besides mental retardation.

PA 03-146 built on the executive order, creating additional requirements for the DMR commissioner when people for whom DMR had direct or oversight responsibility for medical care died. It also directed the OPA director, when allegations were made that the deaths could have been due to abuse or neglect, to determine whether the abuse or neglect occurred, unless a court ordered otherwise.

PA 04-12 (1) established a 24-hour deadline for the DMR commissioner to report to OPA deaths of anyone placed or treated under his direction and (2) shortened from five calendar days to 72 hours the time within which mandated reporters of suspected abuse or neglect of persons with mental retardations had to report to OPA.

Effect of Statutes on Executive Orders

In 1986, the attorney general issued a formal opinion in response to a series of questions about executive orders. One question was whether the legislature could amend or repeal an executive order. In

his response, Attorney General Lieberman wrote that an act that the legislature passed that explicitly referred to the executive order and stated that it modified that order would alter it. He added that even if the executive order was not specifically cited, a “more recent and more specific legislative enactment dealing with the same subject matter would take precedence over an earlier executive order.”

Related Bill

sHB 5630, reported by Public Health and Judiciary committees, requires the IMRB to follow confidentiality and immunity rules under Department of Public Health peer review and research statutes.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Change of Reference
Yea 17 Nay 2 (03/11/2008)

Government Administration and Elections Committee

Joint Favorable
Yea 11 Nay 0 (03/19/2008)