

House of Representatives, April 2, 1998. The Committee on Public Health reported through REP. MCDONALD, 148th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE MENTAL RETARDATION WORKER REGISTRY AND APPEALS BY PROVIDERS.

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

1 Section 1. Section 156 of public act 97-2 of
2 the June 18 special session is repealed and the
3 following is substituted in lieu thereof:

4 As used in sections 157 to 161, inclusive, of
5 [this act] PUBLIC ACT 97-2 OF THE JUNE 18 SPECIAL
6 SESSION:

7 (1) "Abuse" means the wilful infliction by an
8 employee of physical pain or injury or the wilful
9 deprivation of services necessary to the physical
10 and mental health and safety of a department
11 client.

12 (2) "Authorized agency" means any agency
13 authorized in accordance with the general statutes
14 to conduct abuse and neglect investigations and
15 responsible for issuing or carrying out protective
16 services for persons with mental retardation.

17 (3) "Commissioner" means the Commissioner of
18 Mental Retardation.

19 (4) "Department" means the Department of
20 Mental Retardation.

21 (5) "Department client" means a person [with
22 mental retardation or a person] who IS ELIGIBLE

23 FOR, AND receives services or funding from, the
24 department.

25 (6) "Employee" means any individual employed
26 (A) by the department, or (B) by an agency,
27 organization or individual that is licensed or
28 funded by the department. [and that provides or
29 hires others to provide services, either directly
30 or indirectly, to a department client.]

31 (7) "Employer" means (A) the department, or
32 (B) an agency, organization or individual that is
33 licensed or funded by the department. [and that
34 provides or hires others to provide services to a
35 department client.]

36 (8) "Neglect" means the failure by an
37 employee, through action or inaction, to provide a
38 department client with the services necessary to
39 maintain his physical and mental health and
40 safety.

41 (9) "Protective services" has the meaning
42 assigned to it in section 46a-11a.

43 (10) "Registry" means a centralized data base
44 containing information regarding substantiated
45 abuse or neglect.

46 (11) "Substantiated abuse or neglect" means a
47 [final decision, pursuant to chapter 54 that]
48 DETERMINATION BY AN AUTHORIZED AGENCY, FOLLOWING
49 AN INVESTIGATION CONDUCTED OR MONITORED BY SUCH
50 AGENCY, THAT (A) abuse or neglect of a department
51 client has occurred, or (B) there has been a
52 criminal conviction of a felony or misdemeanor
53 involving abuse or neglect.

54 Sec. 2. Section 157 of public act 97-2 of the
55 June 18 special session is repealed and the
56 following is substituted in lieu thereof:

57 (a) The Department of Mental Retardation
58 shall establish and maintain a registry of
59 individuals who have been terminated or separated
60 from employment as a result of substantiated abuse
61 or neglect. The department shall, for the purposes
62 of maintaining the registry, be capable of
63 responding to inquiries, including response by
64 telephone voice mail or other automated response
65 for initial inquiries, as to whether an individual
66 has been terminated or separated from employment
67 as a result of substantiated abuse or neglect.

68 (b) The registry shall include, but not be
69 limited to, the following: (1) The names,
70 addresses and Social Security numbers of those

71 individuals terminated or separated from
72 employment as a result of substantiated abuse or
73 neglect; (2) the date of termination or
74 separation; (3) the type of abuse or neglect; and
75 (4) the name of any employer or authorized agency
76 requesting information from the registry, the
77 reason for the request and the date of the
78 request.

79 (c) The department shall make information in
80 the registry, other than limited information
81 available through an automated response to an
82 initial inquiry, available only to: (1) Authorized
83 agencies, for the purpose of protective service
84 determinations; or (2) employers [seeking to
85 employ a person] WHO EMPLOY INDIVIDUALS to provide
86 services to a department client.

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

94 (e) Not later than five business days
95 following an employee's termination or separation
96 from employment for SUBSTANTIATED abuse or
97 neglect, an employer shall submit to the
98 department the name of such employee and such
99 other information as the department may request.
100 Upon receipt of notification of such termination
101 or separation, the department shall [make an
102 initial determination as to whether to place an
103 individual's name on the registry. If an initial
104 determination warrants placing an individual's
105 name on the registry, the department shall give
106 the individual notice and an opportunity to be
107 heard and shall not place the individual's name on
108 the registry until it has substantiated the abuse
109 or neglect pursuant to chapter 54 governing
110 contested cases] CONDUCT A HEARING IN ACCORDANCE
111 WITH SECTIONS 4-177 TO 4-181a, INCLUSIVE, AS
112 AMENDED, GOVERNING CONTESTED CASES. THE DEPARTMENT
113 SHALL NOT PLACE AN INDIVIDUAL'S NAME ON THE
114 REGISTRY UNTIL THE DEPARTMENT HAS COMPLETED THE
115 HEARING AND THE HEARING HAS RESULTED IN A DECISION
116 TO PLACE THE INDIVIDUAL'S NAME ON THE REGISTRY.

117 (f) THE DEPARTMENT SHALL REMOVE AN EMPLOYEE'S
118 NAME FROM THE REGISTRY IF AN ARBITRATION OR A

119 LEGAL PROCEEDING RESULTS IN (1) A FINDING THAT THE
120 EMPLOYEE WAS UNFAIRLY TERMINATED FROM EMPLOYMENT,
121 AND (2) THE EMPLOYEE HAS A RIGHT TO REINSTATEMENT.

122 [(f)] (g) No employer shall be liable in any
123 civil action for damages brought by an employee or
124 an applicant for employment whose name appears on
125 the registry established by this section arising
126 out of the conduct of the employer in (1) making
127 any report in good faith pursuant to subsection
128 (e) of this section, (2) testifying under oath in
129 any administrative or judicial proceeding arising
130 from such report, (3) refusing to hire or to
131 retain any individual whose name appears on the
132 registry established under this section, or (4)
133 taking any other action to conform to the
134 requirements of this section. The immunity
135 provided in this subsection shall not apply to
136 gross negligence or to wilful or wanton
137 misconduct.

138 Sec. 3. Section 158 of public act 97-2 of the
139 June 18 special session is repealed and the
140 following is substituted in lieu thereof:

141 [(a)] No employer shall hire [or retain an
142 individual without first inquiring of the
143 department as to whether the individual's] AN
144 INDIVIDUAL WHOSE name appears on the registry and
145 no employer shall [hire or] retain an individual
146 [whose] AFTER RECEIVING NOTICE THAT AN
147 INDIVIDUAL'S name so appears.

148 [(b) No person shall inquire of the
149 department as to whether an individual's name
150 appears on the registry except for the purposes
151 authorized under subsection (c) of section 157 of
152 this act.]

153 Sec. 4. Section 160 of public act 97-2 of the
154 June 18 special session is repealed and the
155 following is substituted in lieu thereof:

156 The Department of Mental Retardation [may]
157 SHALL adopt regulations in accordance with the
158 provisions of chapter 54 to implement the
159 provisions of sections 156 to 160, inclusive, of
160 [this act] PUBLIC ACT 97-2 OF THE JUNE 18 SPECIAL
161 SESSION, AS AMENDED BY THIS ACT.

162 Sec. 5. Section 17a-218 of the general
163 statutes is repealed and the following is
164 substituted in lieu thereof:

165 (a) For purposes of this section, the
166 following terms have the following meanings:

167 "Commissioner" means the Commissioner of Mental
168 Retardation; "department" means the Department of
169 Mental Retardation; and "emergency placement"
170 means cases in which there has been a request for
171 a residential accommodation for an individual for
172 whom there is an unforeseen emergency in his
173 current living arrangement, or cases in which the
174 department has had no previous knowledge of a need
175 for placement, or cases in which such a placement
176 is needed because of actions of another state
177 agency or department, including, but not limited
178 to, the Department of Mental Health and Addiction
179 Services, the Department of Children and Families,
180 and any court, or cases prior to any other planned
181 placements, because the health or safety of the
182 individual needing such placement would be
183 adversely affected without such placement.

184 (b) The commissioner shall plan, develop and
185 administer a comprehensive program of
186 community-based residential facilities including,
187 but not limited to, transitional facilities, group
188 homes, community training homes and supervised
189 apartments. On and after January 1, 1997, every
190 contract by the commissioner for the construction,
191 renovation or rehabilitation of a community-based
192 residential facility shall be awarded to the
193 lowest responsible and qualified bidder on the
194 basis of competitive bids in accordance with
195 procedures which the commissioner shall establish
196 in regulations adopted by the commissioner in
197 accordance with the provisions of chapter 54.

198 (c) The commissioner may provide, within
199 available appropriations, subsidies to persons
200 with mental retardation who are placed in
201 supervised apartments, condominiums or homes which
202 do not receive housing payments under section
203 17b-244, in order to assist such persons to meet
204 housing costs.

205 (d) The commissioner may provide, within
206 available appropriations, respite care services
207 which may be administered directly by the
208 department, or through contracts for services with
209 providers of such services, or by means of direct
210 subsidy to parents of mentally retarded persons to
211 enable them to purchase such services.

212 (e) The commissioner may, within available
213 appropriations and in accordance with
214 individualized plans of care, provide a full range

215 of services to support persons with mental
216 retardation living with their families,
217 caretakers, independently or in community-based
218 residential facilities licensed pursuant to
219 section 17a-227. Such services may include, but
220 are not limited to, education and training
221 programs, social services, counseling services,
222 medical services, physical or occupational
223 therapy, parent training, recreation and
224 transportation. Such services may be provided by
225 the department or be purchased from persons or
226 private agencies through contracts pursuant to
227 subsection (c) of section 4-70b or purchased
228 directly by the service recipient or his family.
229 The department may provide a direct subsidy to
230 persons with mental retardation or their families
231 to be used for such purchases of such support
232 services. The recipient of such subsidy shall
233 provide a documented accounting of such subsidy to
234 the department.

235 (f) Notwithstanding the provisions of part
236 III of chapter 59, the commissioner may, within
237 available appropriations, enter into a rental or
238 lease agreement for an apartment, home, or similar
239 private residence if it has been determined by the
240 commissioner that an individual is in need of an
241 emergency placement. Such agreements shall not
242 exceed the fair market price for the area in which
243 the leased premises are located and shall not be
244 for more than twelve months. Upon entering such
245 agreements, the commissioner shall notify the
246 State Properties Review Board and shall begin the
247 leasing procedures outlined in said part III of
248 chapter 59.

249 (g) A DECISION BY THE COMMISSIONER TO REFUSE
250 TO CONTRACT WITH PERSONS OR PRIVATE AGENCIES
251 PURSUANT TO SUBSECTION (e) OF THIS SECTION SHALL
252 BE A FINAL DECISION UNDER CHAPTER 54.

253 Sec. 6. Section 17a-226 of the general
254 statutes is repealed and the following is
255 substituted in lieu thereof:

256 The Commissioner of Mental Retardation shall
257 develop, to the extent funding is available, a
258 program of employment opportunities and day
259 services for adults with mental retardation. Any
260 nonprofit organization which provides such
261 services may apply to the Department of Mental
262 Retardation for funds to be used to assist in

263 establishing, maintaining or expanding its
264 program. No funding to assist in establishing,
265 maintaining or expanding programs of employment
266 opportunities and day services under the
267 provisions of this section shall exceed the
268 ordinary and recurring operating expenses of such
269 employment opportunities and day services. The
270 Commissioner of Mental Retardation shall establish
271 the requirements to be met by such organizations
272 in order to be eligible to receive funds as
273 provided by this section and establish procedures
274 to be used in making application for such funds.
275 Upon receipt of proper application, the Department
276 of Mental Retardation, if funding is available,
277 shall provide such funds, provided the
278 organization meets the requirements established by
279 the commissioner in accordance with the provisions
280 of this section. A DECISION BY THE COMMISSIONER
281 THAT THE APPLICANT DOES NOT MEET THE REQUIREMENTS
282 SHALL BE A FINAL DECISION UNDER CHAPTER 54. The
283 Department of Mental Retardation may receive
284 federal, municipal or private funds available or
285 tendered on a matching or supporting basis for the
286 development, maintenance and promotion of
287 employment opportunities and day services. For
288 purposes of this section, "employment
289 opportunities and day services" means the
290 following programs operated or funded by the
291 Department of Mental Retardation for adults:
292 Supported employment, sheltered employment,
293 community experience, adult day treatment and
294 opportunities for older adults.

295 STATEMENT OF LEGISLATIVE COMMISSIONERS: In section
296 5, reference to a "contested case" was changed to
297 "a final decision" for accuracy of reference and
298 consistency with section 6.

299 PH COMMITTEE VOTE: YEA 23 NAY 0 JFS

decision under UAPA. This would require the Commissioner to provide a formal appeals process, as defined in the UAPA, in order to proceed with such cases. This provision has the potential to impact any private agency that applies for and is denied a contract or has an existing contract with the Department for day programs and support services terminated.

The department would incur additional costs if, as a result of the formal process, an independent hearing officer is required to conduct the hearings at an estimated cost of \$325 per hearing. The number of potential hearings is indeterminate at this time although, based on current department practice, a limited number of hearings may result annually from this provision of the bill. Although there may be an administrative workload increase to the Department, the costs associated with this provision would be related to the volume of resulting hearings.

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OLR BILL ANALYSIS

sHB 5709

AN ACT CONCERNING THE MENTAL RETARDATION WORKER REGISTRY AND APPEALS BY PROVIDERS

SUMMARY: The law requires the Department of Mental Retardation (DMR) to create and maintain a registry of individuals terminated or separated from employment because of substantiated abuse or neglect of a department client. This bill makes a number of changes to the DMR registry program by (1) limiting the definition of "department client" to those eligible for and receiving services from DMR; (2) specifying that "substantiated abuse and neglect" is a determination made after an investigation by an authorized agency; (3) amending the definition of "employee" and "employer"; (4) requiring DMR to conduct and complete a hearing under the Uniform Administrative Procedure Act (UAPA) contested case provisions before it can place a person's name on the registry; (5) requiring removal of a person's name from the registry under certain conditions; and (6) clarifying the use of the registry in hiring or retaining individuals on it.

The bill makes a decision by the DMR commissioner not to contract with existing individuals or private agencies for support services for persons with mental retardation, a final decision under the UAPA and thus subject to court appeal.

It also makes a decision by DMR that a nonprofit organization does not meet the department's requirements to receive funding for establishing or expanding programs of employment opportunities and day services a final decision under the UAPA.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Definitional Changes

The bill limits the definition of "department client" to those individuals who are eligible for and receive services or funding from DMR. Current law defines a department client as anyone with mental retardation or receiving DMR services or funding.

The bill redefines "substantiated abuse or neglect" to mean a determination by an authorized agency, following an investigation conducted or monitored by that agency, that (1) abuse or neglect of a client has occurred or (2) there has been a criminal conviction for a felony or misdemeanor involving abuse or neglect. Currently, substantiated abuse or neglect means a final decision made under the UAPA that abuse or neglect occurred or there was a criminal conviction involving abuse or neglect. By law, an "authorized agency" is one authorized under the general statutes to conduct abuse and neglect investigations and responsible for issuing or carrying out protective services orders for people with mental retardation.

The bill redefines "employee" to mean an individual employed by DMR or an agency, organization, or individual it licenses or funds. But it excludes those employed by agencies or individuals that provide or hire others to provide the services to DMR clients, whether directly or indirectly. It also changes the definition of "employer" to reflect that it no longer includes agencies or individuals hiring others to provide services.

Placing a Name on the Employee Registry

By law an employer who terminates an employee because of patient abuse or neglect must submit the employee's name and other information DMR requests within five business days of the termination or separation. After receiving the notification, DMR must make an initial determination about placing the person's name on the registry. If placement is warranted, DMR must notify the employee and give him a hearing opportunity. It cannot place his name on the registry until the abuse or neglect is substantiated according to the UAPA's contested case provisions.

The bill instead requires DMR, after receiving notice about an employee, to conduct a hearing under the UAPA's contested case provisions. It cannot place his name on the registry until the hearing is completed and results in a decision to put the name on the registry.

Removal of a Name From the Registry

The bill requires DMR to remove an employee's name from the registry if an arbitration or legal proceeding results (1) in a finding that the employee was unfairly terminated and (2) the employee has a right to reinstatement.

Prohibition on Hiring

The bill prohibits DMR or any agency it licenses or funds from hiring a person whose name is on the registry or retaining a person after receiving notice that he is on it. Currently, the employer must first ask DMR whether the name is on the registry before hiring or retaining him. If so, hiring or retaining is prohibited.

BACKGROUND

Contested Case

A "contested case" under the UAPA is a proceeding in which the legal rights, duties or privileges of a party are required by statute to be determined by an agency after an opportunity for hearing or in which a hearing is held.

Final Decision

A "final decision" under the UAPA means an agency's (1) determination in a contested case, (2) declaratory ruling, or (3) decision made after reconsideration. It does not include an agency's preliminary or intermediate ruling or order or its ruling granting or denying a petition for reconsideration.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute
Yea 23 Nay 0