
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1703 Session of
2007

INTRODUCED BY FAIRCHILD, ADOLPH, BEAR, BELFANTI, BEYER, BISHOP,
BUXTON, CALTAGIRONE, CAPPELLI, CARROLL, CLYMER, COHEN,
CREIGHTON, CURRY, DALEY, DALLY, DeLUCA, DENLINGER,
DePASQUALE, EACHUS, FABRIZIO, FRANKEL, FREEMAN, GEIST,
GEORGE, GIBBONS, GINGRICH, GODSHALL, GOODMAN, GRELL, HARRIS,
HENNESSEY, HESS, HICKERNELL, HUTCHINSON, JAMES, KILLION,
KULA, MACKERETH, MARKOSEK, McGEEHAN, McILHATTAN, MELIO,
MENSCH, R. MILLER, MOUL, MOYER, MUNDY, NAILOR, O'NEILL,
PAYTON, PHILLIPS, PICKETT, RAPP, READSHAW, RUBLEY, SCAVELLO,
SCHRODER, SIPTROTH, SOLOBAY, SONNEY, STABACK, STERN,
R. STEVENSON, TRUE, WANSACZ, WATSON AND YUDICHAK,
JULY 6, 2007

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES, JULY 6, 2007

AN ACT

1 Establishing a bill of rights for individuals with mental
2 retardation; and conferring powers and duties on the
3 Department of Public Welfare.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Mental
8 Retardation Bill of Rights Act.

9 Section 2. Findings.

10 The General Assembly finds and declares as follows:

11 (1) Disability is a natural part of the human
12 experience, which does not diminish the right of individuals
13 with mental retardation to:

1 (i) enjoy the opportunity to live, to the extent
2 possible, independently;
3 (ii) make choices;
4 (iii) contribute to society; and
5 (iv) experience full integration and inclusion, to
6 the extent possible, in the economic, political, social,
7 cultural and educational mainstream of society in this
8 Commonwealth.

9 (2) Individuals with mental retardation continually
10 encounter various forms of discrimination in critical areas.

11 (3) There is a lack of public awareness of the
12 capabilities and competencies of individuals with mental
13 retardation.

14 (4) A substantial portion of individuals with mental
15 retardation and their families or legal guardians does not
16 have access to appropriate support and services from generic
17 and specialized service systems and remains unserved or
18 underserved.

19 (5) Communities can be enriched by the full and active
20 participation and the contributions by individuals with
21 mental retardation and their families; and there is a need to
22 ensure that, within this Commonwealth, there is the
23 availability and equitable provision of necessary services
24 for individuals with mental retardation, regardless of
25 religion, race, color, national origin, economic or social
26 status.

27 (6) The long-time commitment of the General Assembly to
28 secure for individuals with mental retardation in partnership
29 with their families or legal guardians the opportunity to
30 choose where they live is affirmed. Consistent with this

1 commitment, the existence of a complete spectrum of options,
2 including community living arrangements and intermediate care
3 facilities is supported. The choice of service options must
4 be supported by State policy, whether the choice is an
5 intermediate care facility or community living arrangement.
6 The choice of service options is to be ensured to individuals
7 with mental retardation, allowing to the maximum extent
8 possible that they not have to leave their home or community.

9 (7) The respective roles that both intermediate care
10 facilities and community living arrangements play in
11 providing options and resources for people with mental
12 retardation and their families or legal guardians who need
13 services is supported.

14 (8) Services must ensure accountability, credibility,
15 responsiveness and quality assurance, whether the funding is
16 Federal, State, local or community.

17 (9) There are approximately 21,056 individuals in this
18 Commonwealth with mental retardation who are waiting for
19 services and programs. There are more than 10,465 people with
20 emergency and critical needs. The waiting list for these
21 persons is expected to grow substantially into the
22 foreseeable future.

23 (10) The Department of Public Welfare needs to develop
24 an adequate plan to address the needs and services for the
25 individuals on the waiting list.

26 (11) For true choice to exist, individuals with mental
27 retardation and their families or legal guardians must be
28 provided with information about their options for services.

29 (12) The goals of the Commonwealth properly include the
30 goal of providing individuals with mental retardation and

1 their families or legal guardians with the opportunities and
2 support to:

3 (i) Make informed choices and decisions.

4 (ii) Pursue meaningful and, to the extent possible,
5 productive lives.

6 (iii) Live in homes, communities, residences or
7 intermediate care facilities in which such individuals
8 can exercise their full rights and responsibilities as
9 citizens.

10 (iv) To the fullest extent possible, as decided by
11 the individual with mental retardation and the family or
12 legal guardian, achieve full integration and inclusion in
13 society, in an individualized manner, consistent with the
14 unique strengths, resources, priorities, concerns,
15 abilities and capabilities of the individual.

16 (13) The purpose of this act is to reflect the United
17 States Supreme Court decision of *Olmstead v. L.C.* (No.98-536
18 U.S. 1999); and the Commonwealth desires to assure
19 individuals with mental retardation and their families or
20 legal guardians participation in the design of and access to
21 services, supports and other assistance and opportunities
22 which promote independence, productivity and choice of living
23 arrangement, be it family living, community living or
24 intermediate care facilities.

25 (14) It is the policy of the Commonwealth that all
26 programs, projects and activities operating in this
27 Commonwealth shall be carried out in a manner consistent with
28 the following principles:

29 (i) Most individuals with developmental disabilities
30 are capable of achieving independence, productivity and

1 integration and inclusion into the community and often
2 require the provision of services, supports and other
3 assistance to achieve independence, productivity and
4 integration and inclusion.

5 (ii) Individuals with mental retardation and their
6 families or legal guardians have competencies,
7 capabilities and personal goals which shall be
8 recognized, supported and encouraged; and any assistance
9 to such individuals shall be provided in an
10 individualized manner, consistent with the unique
11 strengths, resources, priorities, concerns, abilities and
12 capabilities of the individuals.

13 (iii) Individuals with mental retardation and their
14 families or legal guardians are the primary decision
15 makers regarding the services and supports such
16 individuals and their families receive and play
17 significant decision-making roles in policies and
18 programs which affect the lives of such individuals and
19 their families.

20 (iv) Individuals with mental retardation and their
21 families or legal guardians have varying goals and needs,
22 and, therefore, this act should not support one specific
23 service system or setting over another.

24 (v) The Commonwealth shall, within budgetary
25 accountability, provide services, supports and other
26 assistance which demonstrate respect for individual
27 dignity, personal preference and cultural difference.

28 Section 3. Definitions.

29 The following words and phrases when used in this act shall
30 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Department." The Department of Public Welfare of the
3 Commonwealth.

4 "Intermediate care facility." A State-operated or non-State-
5 operated facility, licensed by the Department of Public Welfare
6 in accordance with 55 Pa. Code Ch. 6600 (relating to
7 intermediate care facilities for the mentally retarded), which
8 provides a level of care specially designed to meet the needs of
9 persons who are mentally retarded, or persons with related
10 conditions, who require specialized health and rehabilitative
11 services that are active treatment.

12 Section 4. Choice.

13 (a) Community-based treatment.--The Commonwealth is required
14 to provide community-based treatment for an individual with
15 mental retardation if all of the following apply:

16 (1) The Commonwealth's treatment professionals determine
17 that such placement is appropriate.

18 (2) The affected individual does not oppose such
19 treatment.

20 (3) The placement can be reasonably accommodated, taking
21 into account the resources available to the Commonwealth and
22 the needs of others with mental disabilities.

23 (b) Vacancies.--Subject to subsection (c), if there is a
24 vacancy in an intermediate care facility, the department shall
25 allow admittance to the intermediate care facility to an adult
26 or adolescent with mental retardation on a case-by-case basis if
27 the individual's assessed needs require the funded level of
28 resources which are provided by the intermediate care facility.

29 (c) Community living arrangement.--The department shall not
30 offer an individual admittance to an intermediate care facility

1 under subsection (b) unless the department also offers the
2 individual a choice of community living arrangements and
3 appropriate community support services.

4 (d) Family.--Unless an individual determines otherwise,
5 family members and legal guardians shall be involved in meetings
6 regarding placement of an individual into an intermediate care
7 facility, a community living arrangement, family living or a
8 personal care home.

9 (e) Contact.--Nothing shall prohibit an individual with
10 mental retardation from maintaining contact with family and
11 friends at an intermediate care facility, a community living
12 arrangement or a day program.

13 (f) Complaints.--An individual, a family member or a legal
14 guardian who believes that the needs as detailed in the
15 individualized program plan are not being met may provide the
16 county a letter expressing concerns. The county shall, within 30
17 days, address the concerns and, if necessary, take corrective
18 action or offer additional choices, which shall include an
19 intermediate transfer to a different community living
20 arrangement or an intermediate care facility.

21 Section 5. Waiting list program.

22 (a) Outreach.--Within 180 days of the effective date of this
23 section, the department shall develop an outreach program to
24 ensure that eligible individuals with mental retardation who are
25 receiving services in homes, the community or intermediate care
26 facilities and who are on a waiting list will be made aware of
27 these services.

28 (b) Waiting list plan.--Within 180 days of the effective
29 date of this section, the department shall develop and submit to
30 the Governor, the General Assembly and the county mental

1 retardation program administrators, a plan to eliminate by the
2 year 2009 the current and future waiting list for individuals
3 with mental retardation, who are in need of existing residential
4 programs, including skilled nursing homes, intermediate care
5 facilities, domiciliary care homes, adult foster care homes,
6 community living arrangements for the mentally retarded and
7 group homes for the mentally ill.

8 (c) Contents of plan.--The plan required by subsection (b)
9 shall include:

10 (1) Statistical information on the current and projected
11 annual increase in the waiting list on a county basis. The
12 department shall develop a Statewide standardized form to
13 collect the information from the counties.

14 (2) Identification of the source and amount of the
15 capital funds necessary to eliminate the current waiting list
16 in each county by the year 2009 and the projected annual
17 waiting list in each annual plan update.

18 (3) Financial information on the amount of additional
19 Federal, State or other funds in each county which may be
20 required annually for the operational costs associated with
21 the elimination of the waiting list in each county by the
22 year 2009 and the projected annual waiting list in each
23 annual plan update.

24 (d) Public hearings and comment.--In the development of the
25 plan required by subsection (b), the department shall conduct
26 public hearings and obtain public comment from individuals with
27 mental retardation, their families and guardians and providers
28 of services to the mental retardation community.

29 (e) Annual submission of updated plan.--The department shall
30 update the statistical and financial data to the plan required

1 by subsection (b) annually and submit the updated plan to the
2 Governor, General Assembly and the county mental retardation
3 program administrators by December 31, beginning December 31,
4 2009.

5 Section 6. Funding.

6 It is the intent of the General Assembly that services under
7 this act shall be made available across this Commonwealth,
8 taking into account the resources available to the Commonwealth
9 and the needs of others with mental disabilities.

10 Section 7. Effective date.

11 This act shall take effect in 60 days.