

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

## No. 1824

Session of  
1981

INTRODUCED BY McCLATCHY, SEPTEMBER 22, 1981

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
OCTOBER 13, 1981

## AN ACT

1 Amending the act of October 20, 1966 (3rd Sp.Sess., P.L.96,  
2 No.6), entitled "An act relating to mental health and mental  
3 retardation; authorizing county programs and amending,  
4 revising and changing the laws relating thereto and making an  
5 appropriation," further providing for services, treatment or  
6 habilitation of certain persons.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 ~~Section 1. The General Assembly finds and determines as~~ <—  
10 ~~follows:~~

11 ~~(1) It has been contended in various State and Federal~~  
12 ~~courts, based upon inferences drawn from certain general~~  
13 ~~language contained in the act of October 20, 1966 (3rd Sp.Sess.,~~  
14 ~~P.L.96, No.6), known as the "Mental Health and Mental~~  
15 ~~Retardation Act of 1966," that the act creates in mentally~~  
16 ~~retarded persons a right to receive services, treatment and~~  
17 ~~habilitation in the least restrictive setting, including the~~  
18 ~~right in mentally retarded persons to receive treatment and~~  
19 ~~habilitation in facilities known as community living~~

1 arrangements.

2 ~~(2) These contentions implicate important policy issues~~  
3 ~~affecting mentally retarded persons, their families, the~~  
4 ~~community at large and government at the State and county level~~  
5 ~~which should be expressly addressed and resolved by the General~~  
6 ~~Assembly of this Commonwealth.~~

7 ~~(3) These contentions raise fiscal questions of grave~~  
8 ~~consequences to the Commonwealth and the counties which, if~~  
9 ~~accepted, could seriously impair their power and duty to~~  
10 ~~determine appropriate funding levels and priorities among a~~  
11 ~~multitude of important public programs and vital public needs.~~

12 ~~(4) This act is an appropriate means for the resolution of~~  
13 ~~these policy issues and clarifying the act, thus curing whatever~~  
14 ~~uncertainty may have resulted from certain general language in~~  
15 ~~the act.~~

16 Section 2 1. The act of October 20, 1966 (3rd Sp.Sess., <—  
17 P.L.96, No.6), known as the "Mental Health and Mental  
18 Retardation Act of 1966," is amended by adding a section to  
19 read:

20 Section 103. General Policy.--(a) The purpose of this act  
21 is to establish the structure of the publicly funded mental  
22 health and mental retardation services delivery system in this  
23 Commonwealth, and to set forth the respective responsibilities  
24 of the Commonwealth and the counties with respect to that  
25 system.

26 (b) Subject to the availability of appropriated funds, it is  
27 the purpose of this act to make services available for persons  
28 eligible under this act. Persons eligible for services under  
29 this act shall receive the level of service determined by the  
30 department or the counties, as the case may be, within the

1 limits of the resources available to the counties and the  
2 Commonwealth. It is the intention of the General Assembly that  
3 the department or the counties may not be compelled in  
4 individual cases, or on behalf of any class of individuals, to  
5 provide services, treatment or habilitation for which funding  
6 has not been provided by the General Assembly.

7 Section 3 2. Section 201 of the act is amended to read: <—

8 Section 201. General Powers and Duties of the Department.--

9 (a) The department shall have power, and its duty shall be:

10 (1) To assure within the State the availability and  
11 equitable provision of adequate mental health and mental  
12 retardation services for all persons who need them, regardless  
13 of religion, race, color, national origin, settlement,  
14 residence, or economic or social status.

15 (2) To make, with the advice of the Advisory Committee for  
16 Mental Health and Mental Retardation and enforce all regulations  
17 necessary and appropriate to the proper accomplishment of the  
18 mental health and mental retardation duties and functions  
19 imposed by this act. Such regulations shall not become effective  
20 until the department shall have given the local authorities  
21 thirty days written notice of the proposed regulations and  
22 afforded the local authorities the opportunity for a hearing  
23 before the department on the proposed regulations.

24 (3) To consult with and assist each county in carrying out  
25 mental health and mental retardation duties and functions and  
26 where necessary after thirty days written notice to the counties  
27 affected and an opportunity for such counties for a hearing  
28 before the department and with the advice of the Advisory  
29 Committee for Mental Health and Mental Retardation to require  
30 two or more counties to join in establishing a program to

1 provide the services required by this act.

2 (4) To adopt State-wide plans for the operation of all State  
3 operated facilities under the jurisdiction of the department and  
4 to assign to each facility or portion thereof, such duties for  
5 the care of the mentally disabled, as the secretary shall  
6 prescribe. The assignments herein referred to shall be made with  
7 due regard to geographical location and population distribution.

8 (5) To establish and maintain working relationships with  
9 other governmental bodies and public and private agencies,  
10 institutions and organizations so as to assure maximum  
11 utilization of services and facilities which each such  
12 governmental body and public and private agency, institution and  
13 organization may have, which may be of benefit to the mentally  
14 disabled.

15 (6) To appoint such regional mental health and mental  
16 retardation boards as may be necessary to advise the department  
17 in the establishment, administration and review of mental health  
18 and mental retardation programs.

19 (7) To make grants, pay subsidies, purchase service and  
20 provide reimbursement for mental health and mental retardation  
21 services in accordance with this act.

22 (8) To supervise mental health and mental retardation  
23 facilities, services and programs as provided by law.

24 (b) The availability and extent of services under this act  
25 shall be qualified and limited by the appropriations made by the  
26 General Assembly.

27 Section 4 3. Section 301 of the act is amended by adding a <—  
28 subsection to read:

29 Section 301. General Powers and Duties of Local Authorities;  
30 Mental Health and Mental Retardation Program and Services.--

1 \* \* \*

2 (h) The availability and extent of services under this act  
3 shall be qualified and limited by the fiscal allocations made by  
4 the Commonwealth and the funds authorized in the county budgets.

5 Section 5 4. The act is amended by adding sections to read: <—

6 Section 513. Limitation on Governmental Liability.--(a)  
7 Nothing contained in this act shall require the department or  
8 the counties to provide mental retardation services, treatment  
9 or habilitation except to the extent that the General Assembly  
10 has appropriated the funds necessary to provide such services,  
11 treatment or habilitation, and that the appropriate facilities,  
12 trained personnel and other resources are available to provide  
13 such services, treatment or habilitation or can be developed  
14 with the appropriated funds. Subject to the availability of  
15 appropriated funds, nothing herein shall change the respective  
16 powers and duties of the department and the counties in regard  
17 of the programs provided under this act.

18 (b) In the event that sufficient funds to provide adequate  
19 mental retardation services, treatment or habilitation for all  
20 persons who need them have not been appropriated by the General  
21 Assembly, or sufficient facilities, personnel or other resources  
22 are otherwise unavailable, the department and the counties,  
23 consonant with their respective powers and duties under this  
24 act, shall determine the services, treatment or habilitation to  
25 be provided and the identity of the mentally retarded persons to  
26 receive them, in a manner reasonably designed to achieve the  
27 objectives of this act, having regard for the relative needs of  
28 mentally retarded persons and the most efficient utilization of  
29 available resources and funding.

30 Section 514. Available Services, Treatment and Habilitation

1 Alternatives.--The department or the counties, consonant with  
2 funds appropriated for this purpose, shall exercise their  
3 judgment to determine the setting or facility in which services,  
4 treatment or habilitation are to be provided in a particular  
5 case, and shall be guided, along with such other considerations  
6 as may be appropriate, by all of the following:

7 ~~(1) A preference for the least restrictive available setting~~ <—  
8 ~~or facility appropriate to the mentally retarded client;~~

9 ~~(2)~~ (1) the relative needs of other mentally retarded <—  
10 persons for services in a particular setting or facility; and

11 ~~(3)~~ (2) the effective and efficient utilization of <—  
12 appropriated funding and available facilities, personnel and  
13 other resources.

14 Section 515. Actions.--No action shall lie, nor liability  
15 attach, on the part of any individual, government agency or unit  
16 (including the Commonwealth) or other person, as to any  
17 determination made by or on behalf of any such agency, unit or  
18 person pursuant to sections 513 or 514 of this act if such  
19 determination is made in good faith and not falsely, corruptly  
20 or maliciously.

21 Section 6 5. All acts and parts of acts that deal with <—  
22 mental retardation are repealed insofar as they are inconsistent  
23 with this act.

24 Section 7 6. This act shall take effect immediately, shall <—  
25 be retroactive to January 1, 1967, and shall apply to any and  
26 all pending actions or proceedings.