

ACT 341

H.B. NO. 598

A Bill for an Act Relating to Persons with Developmental Disabilities or Mental Retardation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and purpose. The legislature finds that in Hawaii there are many organizations, both public and private, concerned with the planning and implementation of a wide spectrum of services for persons with developmental disabilities or mental retardation.

The treatment philosophies represented by these agencies and groups are dedicated to improving the quality of life of an important segment of Hawaii's population. This bill is intended to improve services for persons with developmental disabilities or mental retardation.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
SERVICES FOR PERSONS WITH DEVELOPMENTAL
DISABILITIES OR MENTAL RETARDATION**

§ -1 Definitions. As used in this chapter, unless the context requires otherwise:

“Active treatment” means provision of services as specified in an individualized service plan. These services may include, but are not limited to, activities, experiences, and therapy which are part of a professionally developed and supervised program of health, social, habilitative, and developmental services.

“Case management services” means services to persons with developmental disabilities or mental retardation that assist them in gaining access to needed social, medical, legal, educational, and other services, and includes:

- (1) Follow-along services which assure, through a continuing relationship between an agency or provider and a person with a developmental disability or mental retardation and the person's parent, if the person is a minor, or guardian, if a guardian has been appointed for the purpose, that the changing needs of the person and the family are recognized and appropriately met.
- (2) Coordinating and monitoring services provided to persons with developmental disabilities or mental retardation by two or more persons, organizations, or agencies.
- (3) Providing information to persons with developmental disabilities or mental retardation about availability of services and assisting the persons in obtaining the services.

“Department” means the department of health.

“Developmental disabilities” means a severe, chronic disability of a person which:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;

- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic sufficiency; and
- (5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

"Director" means the director of health.

"Habilitation" means the process by which the staff of an agency assists an individual to cope more effectively with the demands of his or her own person and environment and to raise the level of his or her physical, mental, and social functioning. Habilitation includes, but is not limited to, programs of formal structured education and treatment.

"Individualized service plan" means the written plan required by section -6.

"Individually appropriate" means responsive to the needs of the person as determined through interdisciplinary assessment and provided pursuant to an individualized service plan.

"Interdisciplinary team" means a group of persons that is drawn from or represents those professions, disciplines, or service areas that are relevant to identifying an individual's needs and designing a program to meet them, and is responsible for evaluating the individual's needs, developing an individual program plan to meet them, periodically reviewing the individual's response to the plan, and revising the plan accordingly. A complete team includes the individual being served, unless clearly unable to participate; the individual's family, unless their participation has been determined to be inappropriate; those persons who work most directly with the individual in each of the professions, disciplines, or service areas that provide service to the individual, including direct-care or direct-contact staff; and any other persons whose participation is relevant to identifying the needs of the individual and devising ways to meet them.

"Least restrictive" means the least intrusive and least disruptive intervention into the life of a person with developmental disability or mental retardation that represents the least departure from normal patterns of living that can be effective in meeting the person's developmental needs.

"Least restrictive environment" means that environment that represents the least departure from normal patterns of living that can be effective in meeting the individual's needs.

"Mental retardation" means significantly subaverage general intellectual functioning resulting in or associated with concurrent moderate, severe, or profound impairments in adaptive behavior and manifested during the developmental period.

"Monitor" means to conduct a systematic, coordinated, objective, qualitative review of services provided by any person, agency, or organization.

"Representative" means any individual who can advise and advocate for a person with developmental disabilities or mental retardation and who shall serve at the request and pleasure of such person; provided that if the person with developmental disabilities or mental retardation is a minor or is legally incapacitated and has not requested a representative, the parent or guardian of the person may request a representative to assist on behalf of the person with developmental disabilities or mental retardation.

“Residence” or “residential” means the living space occupied by the person with a developmental disability or mental retardation, including single-person homes, natural family homes, care homes, group homes, foster homes, institutional facilities, and all other types of living arrangements.

“Services” means appropriate assistance provided to a person with a developmental disability or mental retardation in the least restrictive, individually appropriate environment to provide for basic living requirements and continuing development of independence or interdependent living skills of the person. These services include, but are not restricted to: case management; residential, developmental, and vocational support; training; habilitation; active treatment; day treatment; day activity; respite care; domestic assistance; attendant care; rehabilitation; speech, physical, occupational and recreational therapy; recreational opportunities; counseling, including counseling to the person’s family, guardian, or other appropriate representative; development of language and communications skills; interpretation; transportation; and equipment.

§ -2 Developmental disabilities system. (a) The department of health shall develop and administer a comprehensive system of programs and services for persons with developmental disabilities or mental retardation within the limits of state or federal resources allocated or available for purposes of this chapter. The department’s responsibility for persons with developmental disabilities or mental retardation, including Waimano training school and hospital and community services, shall be under one administrative unit for the purpose of coordination, monitoring, evaluation, and delivery of services.

(b) The department may ensure the provision of an array of appropriate services and care to persons with developmental disabilities or mental retardation through the utilization of existing resources within the community, through coordination with programs and services provided under other federal, state, or county acts, and through specific funding when no other resources are available. The department shall not supplant or duplicate services provided under other federal, state, or county acts.

(c) Programs of the department may include, but shall not be limited to:

- (1) Early identification and evaluation of persons with developmental disabilities or mental retardation;
- (2) Development, planning and implementation in coordination with other federal, state, and county agencies, of service programs for persons with developmental disabilities or mental retardation;
- (3) Development and provision of service programs in the public or private sectors through chapter 42, for persons with developmental disabilities or mental retardation;
- (4) Establishment of a continuum of comprehensive services and residential alternatives in the community so as to allow persons with developmental disabilities or mental retardation to live in the least restrictive, individually appropriate environment;
- (5) Development and implementation of a program for single entry access by persons with developmental disabilities or mental retardation to services provided under this chapter as well as referral to and coordination with services provided in the private sector or under other federal, state, or county acts, including case management, and development of an individualized service plan by an interdisciplinary team;

- (6) Collaborative and cooperative services with public health and other groups for programs of prevention of developmental disabilities or mental retardation;
 - (7) Informational and educational services to the general public and to lay and professional groups;
 - (8) Consultative services to the judicial branch of government, to educational institutions, and to health and welfare agencies whether such agencies are public or private;
 - (9) Provision of community residential alternatives for persons with developmental disabilities or mental retardation, including group homes and homes meeting ICF/MR standards; and
 - (10) Provision of other programs, services, or facilities necessary to provide a continuum of care for persons with developmental disabilities or mental retardation.
- (d) Provisions for programs and services shall be limited to the amount of resources allocated or available for purposes of this chapter.

§ -3 **Community services for the developmentally disabled.** The department shall develop and administer a community service delivery system which may design, implement, administer, coordinate, monitor, and evaluate the programs and services of the department for persons with developmental disabilities or mental retardation other than the operations and management of Waimano training school and hospital.

§ -4 **Waimano training school and hospital.** The department may operate and administer an institution known as the "Waimano training school and hospital" for persons with developmental disabilities or mental retardation who are incapable of independent self-support and self-management in the community and are incapable of attaining independent self-support and self-management without proper treatment and training.

§ -5 **Other systems within the developmental disability system.** The department may create other systems as required to implement the services necessary for persons with developmental disabilities or mental retardation.

§ -6 **Application and assessment for services; individualized service plans.** (a) The department may develop and administer an application and assessment system for persons with developmental disabilities or mental retardation. If the department determines that the person is eligible for services under this chapter within the limits of federal or state resources available for the purposes of this chapter, an individualized service plan for the person shall be prepared by an interdisciplinary team for the person and the department may provide case management services to the person.

(b) The procedure for assessment of the person and the elements of the individualized service plan shall be as described in rules adopted by the department pursuant to chapter 91. The individualized service plan shall be in writing and shall include, at a minimum, the nature of the needs of the person, treatment and care goals, and specific services to be offered to the person to attain these goals.

§ -7 **Provision of services.** Based upon the individualized service plan, the department shall, as may be required, refer the person to services provided by the department under this chapter, to services provided under other federal or state laws, or to services provided by appropriately licensed private agencies.

§ -8 Rights of persons with developmental disabilities or mental retardation. (a) Persons with developmental disabilities or mental retardation shall have the following rights:

- (1) To receive the least restrictive, individually appropriate services, including a program of activities outside the residence in accordance with the person's individualized service plan;
- (2) To reside in the least restrictive, individually appropriate residential alternative located as close as possible to the person's home community within the State;
- (3) To the extent it is individually appropriate, to:
 - (A) Interact with nondisabled persons in a nontreatment, non-service-oriented setting;
 - (B) Live with or in close proximity to nondisabled persons; and
 - (C) Live in a setting which closely approximates those conditions available to nondisabled persons of the same age;
- (4) To reasonable access to review medical, service, and treatment files and to be informed of diagnoses;
- (5) To participate in the development of the individualized service plan, if able to participate, or to be represented by a parent, guardian, or other representative as appropriate;
- (6) To receive a copy of the person's individualized service plan; and
- (7) To privacy and confidentiality, to the extent possible, in connection with services provided to the person.

(b) Rights listed in this chapter shall not be construed to replace or limit any other rights, benefits, or privileges, including other statutory and regulatory due process rights and protections, to which a person with a developmental disability or mental retardation may be entitled.

(c) The enumeration or granting of these rights does not guarantee the provision of services.

§ -9 Request for admission to Waimano training school and hospital. (a) Except as provided in this section, no person shall be admitted to Waimano training school and hospital.

(b) Any person who is found to be incapable of independent self-support and self-management in the community or to be incapable of attaining independent self-support and self-management without proper treatment and training, and who is found to require institutional care, supervision, control, treatment, and training for the person's own welfare and who is found to be developmentally disabled or mentally retarded may be voluntarily admitted to Waimano training school and hospital.

(c) If the person is a minor, the department may permit the admission of the minor to Waimano training school and hospital upon the written application of a parent, guardian, or other person or agency having legal custody; provided that no minor shall be entitled as a matter of right either to be admitted or to remain at the Waimano training school and hospital.

(d) If the person is an adult, the department may permit the admission of the adult to Waimano training school and hospital upon the written application by the person or by a court-appointed guardian of the adult's person if the guardian is specifically authorized to make such application in the court order appointing the guardian or any other order issued by the family court; provided that no adult shall be entitled as a matter of right either to be admitted or to remain at the Waimano training school and hospital.

(e) The department may contest inappropriate admission to Waimano training school and hospital by the court.

§ -10 Standards for admission to Waimano training school and hospital. (a) No person shall be voluntarily admitted to Waimano training school and hospital except upon recommendation of an interdisciplinary team as reflected in the person's individualized service plan.

(b) An interdisciplinary team which recommends voluntary admission to Waimano training school and hospital shall include, but not be limited to, a physician, a clinical psychologist, and a social worker, all qualified by professional training and experience to make the diagnosis of developmental disability or mental retardation and the findings necessary to determine that admission to Waimano training school and hospital is the proper, individually appropriate placement in the least restrictive environment available. The interdisciplinary team's evaluation shall include the administration of psychological tests and psychological evaluations as an aid in the diagnosis of developmental disability or mental retardation, and the results of such tests shall be included in the individualized service plan. The individualized service plan shall meet the requirements of section -6.

(c) The director may cause the person to be admitted to Waimano training school and hospital pursuant to the person's individualized service plan if the director determines there is no suitable alternative available which would be less restrictive than admission.

(d) The department shall orient admissions into Waimano training school and hospital for persons with severe or profound mental retardation.

§ -11 Director as guardian. (a) Notwithstanding any law to the contrary, the family court may appoint the director as guardian of any person if the court finds that:

- (1) The person is incapacitated as defined in section 560:5-101(2);
- (2) The person is developmentally disabled or mentally retarded;
- (3) The person may reasonably be expected to need treatment or care at Waimano training school and hospital or any residential facility; and
- (4) There is no other suitable guardian including the public guardian as designated in chapter 551A able or willing to serve as guardian of the person.

(b) The director, if so appointed, shall have all the powers and duties of a guardian of the person duly appointed by the court; provided that the director shall not be liable in damages for any tortious act committed by the person.

§ -12 Periodic review. The director shall cause any person admitted to Waimano training school and hospital to be re-examined by an interdisciplinary team on the same terms and conditions as required in section -10, not less than annually. Following such re-examination, the director shall discharge such persons from Waimano training school and hospital unless (1) the interdisciplinary team certifies that continuing admission is proper and that the person is in need of care or treatment at Waimano training school and hospital, and (2) the director redetermines that there is no suitable alternative available which would be less restrictive than admission.

§ -13 Payments for care and treatment of persons receiving services; liability. A parent, guardian of the property, or other person liable for the support of any person receiving services under this chapter may be required to pay such sums as may be determined by the department for the care and treatment of the person. The parent or guardian of the property of a minor

receiving services under this chapter shall be liable for such care and treatment until the person admitted has reached the age of majority. The liability of a guardian of the property of a person under this section shall be limited to the estate of the ward and shall not be recoverable out of the individual assets of the guardian. Every person receiving services under this chapter and any property of the person's estate not exempt from execution shall be liable for the expense of the person's care and treatment. The attorney general, whenever requested by the director, shall take such steps as may be appropriate, by civil action if necessary, to enforce any liability established by this section. The attorney general may designate any appropriate county attorney to act in the attorney general's behalf in any enforcement proceeding.

The department, with the approval of the governor and from the funds appropriated to the department for the care and treatment of persons with developmental disabilities or mental retardation, may transfer from time to time to the department of social services and housing such amounts as may be requested by the department of social services and housing to match federal funds available under Title XIX of the Social Security Act to assist any indigent or medically indigent persons to pay for the care and treatment of any person receiving services under this chapter. The department may expend federal funds so received for the purposes of this chapter.

§ -14 Earnings and income of residents and wards. The director shall adopt, pursuant to chapter 91, rules necessary for the collection, conservation, and disposition of earnings or income of any person admitted to Waimano training school and hospital which are not subject to the control of a court appointed guardian of the property of the resident or ward, upon such terms and conditions as the director may deem advisable.

§ -15 Compensation for labor by persons admitted to Waimano training school and hospital. Any person admitted to Waimano training school and hospital and performing services for Waimano training school and hospital may be allowed compensation for the services as shall be determined by the director pursuant to applicable labor standards laws. No person, because of the person's services for Waimano training school and hospital, shall be deemed to be an employee of the State.

§ -16 Effect on prior commitments. Persons committed to Waimano training school and hospital prior to the effective date of this chapter shall remain wards of the director, and the director is hereby granted the power to voluntarily admit such persons to Waimano training school and hospital. These persons shall be deemed to have met the criteria for admission under this chapter. Any parent or other interested person may petition the family court for removal of the director as guardian of the person of any person committed to Waimano training school and hospital on the effective date of this Act, under section 560:5-307.

§ -17 Authority of director to enter into agreements; make dispositions of state resources. (a) The director may enter into agreements with the federal government, other state departments and agencies, and the counties; enter into assistance agreements with private persons, groups, institutions, or corporations; purchase services required or appropriate under this chapter from any private persons, groups, institutions, or corporations; allocate and expend any resources available for the purposes of this chapter; and do all things necessary to accomplish the purposes and provisions of this chapter.

(b) To the extent the director deems it appropriate, the director may require a recipient of any state funds under this chapter to contribute moneys, facilities, or services for carrying out the program or project.

(c) The director shall establish standards and review procedures to assure that private persons, groups, institutions, or corporations provide the services and facilities necessary to accomplish the purposes for which the funds are disbursed.

§ -18 **Rules.** The director, in consultation with the state planning council on developmental disabilities, private agencies, users of services under this chapter, and other interested parties, shall adopt rules pursuant to chapter 91 necessary or appropriate to carry out this chapter, which shall include, but not be limited to:

- (1) Establishment of eligibility requirements for participation in services provided under this chapter;
- (2) Establishment of standards of transfer from one facility to another;
- (3) Provision for the involvement of the person and, where appropriate, the parents, guardian, or other representatives of the person in the determination of eligibility under this chapter, the preparation of the person's individualized service plan, and the selection or rejection of services under this chapter;
- (4) Protection and enhancement of the rights of persons receiving or applying for services under this chapter, including the right to privacy and confidentiality;
- (5) A fair, timely, and impartial grievance procedure to provide administrative due process and recourse for persons aggrieved by any action or failure to act on the part of the department under this chapter; and
- (6) Other provisions required or appropriate to implement the purposes of this chapter.

§ -19 **Limitation of liability.** The responsibilities of the department to carry out this chapter shall be limited to the resources available to carry out the provisions of this chapter. When such resources are exhausted, no action may be brought by or on behalf of any person or organization in any court to compel the provision of further services.

§ -20 **Standards for services.** The department shall require appropriate standards of services to be met by its own services or contractual services including residential, day treatment, and other related programs. These standards, including those for intermediate care facility services in facilities for the mentally retarded or persons with related conditions shall, wherever applicable and appropriate, conform to federal standards."

SECTION 3. Chapter 333, Hawaii Revised Statutes, is repealed.

SECTION 4. Chapter 333E, Part II, Hawaii Revised Statutes, is repealed.

SECTION 5. The director shall take such actions directly or through the department of social services and housing to maximize federal Title XIX funds for residential, day programs, family support, respite, and other services as applicable. Nothing in this Act is intended to preclude the State from claiming and receiving Medicaid reimbursement for services covered under the State's Medical Assistance plan and provided on behalf of Title XIX-eligible recipients.

Federal reimbursements for additional Title XIX eligible services provided by the State after July 1, 1987 for the purposes of this chapter shall be expended by the department of health for the purposes of this Act.

SECTION 6. The department of health is authorized to establish and administer special funds for the purposes of this chapter and in order to maximize use of federal funds.

SECTION 7. **Statewide plan for services.** (a) The department of health, in coordination with the state planning council on developmental disabilities and other related private and public agencies, shall jointly develop and implement a statewide plan for services. The plan shall address services to persons with developmental disabilities or mental retardation not otherwise entitled to or receiving the same services under another state or federal act.

(b) The first plan shall be presented to the 1989 legislature.

(c) The state health functional plan shall be developed consistently with the statewide plan required by this Act.

(d) A report shall be submitted to the legislature annually on the implementation of this plan.

SECTION 8. This Act shall take effect on July 1, 1987.

(Approved June 29, 1987.)