

• **Chapter 123B Section 1** Definitions

Section 1. The following words as used in this chapter shall, unless the context otherwise requires, have the following meanings:

“Commissioner”, the commissioner of developmental services.

“Department”, the department of developmental services.

“Dependent funds”, those funds which a resident is unable to manage or spend himself as determined by the periodic review.

“Facility”, a public or private facility for the care and treatment of persons with an intellectual disability.

“Fiduciary”, any guardian, conservator, trustee, representative payee as appointed by a federal agency, or other person who receives or maintains funds on behalf of another.

“Funds”, all cash, checks, negotiable instruments or other income or liquid personal property, and governmental and private pensions and payments, including payments pursuant to a Social Security Administration program.

“Independent funds”, those funds which a resident is able to manage or spend himself as determined by the periodic review.

“Person with a developmental disability”, a person with a severe, chronic disability of an individual 5 years of age or older that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the individual attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity;

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; and

(vii) Economic self-sufficiency.

(5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated, except that such term, when applied to infants and young children means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

A person who has a developmental disability may be considered to be mentally ill; provided, however, that no person with a developmental disability shall be considered to be mentally ill solely by reason of the person's developmental disability.

"Person with an intellectual disability", a person who has an intellectual disability, characterized by significant limitations in both intellectual functioning and adaptive behavior as expressed in conceptual, social and practical adaptive skills and beginning before age 18, and consistent with the most recent definition provided by the American Association on Intellectual and Developmental Disabilities; provided, that in applying this definition the following shall be considered: (i) limitations in present functioning within the context of community environments typical of the individual's age, peers, and culture; (ii) cultural and linguistic diversity and differences in communication, sensory, motor and behavioral factors; (iii) limitations often coexist with strengths within an individual; (iv) an important purpose of describing limitations is to develop a profile of needed supports; and (v) with appropriate personalized supports over a sustained period, the life functioning of the person with an intellectual disability generally will improve; and provided further, that a person who has an intellectual disability may be considered to be mentally ill; provided, however, that no person with an intellectual disability shall be considered to be mentally ill solely by reason of the person's intellectual disability.

“Restraint”, bodily physical force, mechanical devices, chemicals, confinement in a place of seclusion other than the placement of a resident in his room for the night, or any other means which unreasonably limit freedom of movement.

“Superintendent”, the superintendent or other head of a public or private facility.

- **CHAPTER 123B** MENTAL RETARDATION
- **Section 2** Regulations

Section 2. The department shall, in accordance with section two of chapter thirty A and subject to appropriation, adopt regulations consistent with this chapter which establish procedures and the highest practicable professional standards for the reception, examination, treatment, restraint, transfer and discharge of persons with an intellectual disability in departmental facilities. Said regulations shall be adaptable to changing conditions and to advances in methods of care and treatment and in programs and services for persons with an intellectual disability. Said regulations (1) shall include, but not necessarily be limited to, long and short-term residential care, educational services, and preschool clinical services, (2) shall define the levels of and other aspects of intellectual disability as deemed necessary by the department, and (3) shall provide for different procedures for particular facilities or programs.

The department shall, in accordance with section two of chapter thirty A and subject to appropriation, adopt regulations consistent with this chapter which establish procedures and the highest practicable professional standards for community services for persons with developmental disabilities.

- **CHAPTER 19B** DEPARTMENT OF DEVELOPMENTAL SERVICES
- **Section 1** Creation; powers of department and commissioner

Section 1. There shall be a department of developmental services, in this chapter called the department, and a commissioner of developmental services who shall have and shall exercise exclusive supervision and control of the department. All action of said department shall be taken by the commissioner, or under the direction of said commissioner, by such agents or subordinate officers as he shall determine.

The department shall take cognizance of all matters affecting the welfare of the persons with an intellectual disability **or persons with a developmental disability**. The department shall have supervision and control of all public facilities for persons with an intellectual disability and of all persons received into any of said facilities, and shall have general supervision of all private facilities for such persons; provided, however, that this sentence shall not be deemed to interfere with or supersede any other provision of general or special law which grants or

confers supervision and control of certain public facilities for persons with an intellectual disability and persons admitted to such facilities or which grants or confers supervision over certain private facilities for such persons, to any other department of the commonwealth or to any political subdivision. The department shall have supervision and control of all intellectual disabilities facilities established within the department and, subject to appropriation, may further develop additional intellectual disabilities facilities under commonwealth operation or, subject to appropriation, may contract with any private agency furnishing complementary or community ~~mental retardation services~~ **services for persons with an intellectual disability** to pay it the ordinary and reasonable compensation for such services actually rendered or furnished to persons in need thereof. The department may, subject to appropriation, enter into agreements with nonprofit charitable corporations, partnerships or collaboratives for the providing of ~~intellectual disabilities services~~ **services for persons with an intellectual disability or a developmental disability**. Such agreements may provide for the retention of all revenues resulting from all billings and third party reimbursements by such organizations, provided, that the expenditure of such funds is made in conformance with applicable state and federal law and subject to the approval of the commissioner.

The department shall be a corporation for the purpose of taking, holding and administering in trust for the commonwealth any grant, devise, gift or bequest made to the commonwealth, to it, or to any state school or other intellectual disabilities facility of the department for the use of persons under its control in any such facility or for the use of such school or facility, or, if the acceptance of such trust is approved by the governor, for expenditure upon any work which the department is authorized to undertake.

The department shall select the site of any new state intellectual disabilities facility and any land to be taken or purchased by the commonwealth for the purposes of any new or existing state intellectual disabilities facility.

The department of highways shall construct and maintain roads on the grounds of property of a state intellectual disabilities facility; and expenses so incurred shall be paid from appropriations for the maintenance of such facility.

- **CHAPTER 19B** DEPARTMENT OF DEVELOPMENTAL SERVICES
- **Section 2** Commissioner; appointment; qualifications; appointments by commissioner; report; salary

Section 2. The secretary of health and human services shall appoint, with the approval of the governor, a commissioner of ~~mental retardation~~ **of the department of developmental services** who shall serve at the pleasure of the secretary and may be removed by the secretary at any time, subject to the approval of the governor.

Such commissioner shall have such educational qualifications and such administrative and other experience, including education or experience in a field related to human services, as the secretary of health and human services determines are necessary for performance of the duties of commissioner.

The commissioner shall appoint and may remove such agents and subordinate officers as the commissioner may deem necessary, and may establish such divisions or regional management systems in the department as the commissioner deems appropriate from time to time. Except as otherwise provided by law all offices and positions shall be subject to the provisions of chapter thirty-one; provided, however, the provisions of chapter thirty-one shall not apply to physicians and psychiatrists with full medical-psychiatric responsibility as opposed to administrative responsibility, to ~~mental retardation-~~regional managers, if any, to nurses employed as such by the department, or to attorneys acting as legal counsel; and provided further, however, and notwithstanding the preceding provision or any other provision of law, all offices and positions, which as a condition of receiving federal grants for programs and activities to which the federal standards for a merit system of personnel administration relate and make necessary the application of the provisions of the civil service law, shall be subject to the provisions of chapter thirty-one if such federal standards are uniform in all states.

At the end of each fiscal year, the commissioner shall make an annual report of the activities of the department and of each facility or unit under its control, the cost of operating the same, the initiation of new programs, and the progress made in providing services and facilities ~~for mental retardation in the commonwealth~~ **for persons with intellectual disabilities and services for people with developmental disabilities in the commonwealth.**

The position of commissioner shall be classified in accordance with section forty-five of chapter thirty and the salary shall be determined in accordance with section forty-six C of said chapter thirty.

Prior to undertaking any activity or implementing any policy which would affect expenditures for medical assistance under chapter one hundred and eighteen E, involving the delivery of services reimbursable under said chapter, certification and licensure of providers of services under said chapter, or identifying individuals eligible for such assistance under said chapter, the commissioner shall assure that such activity or policy is reviewed by the commissioner of medical assistance.

The commissioner shall consult with the commissioner of mental health prior to taking an action substantially affecting the design and implementation of behavioral health services for children under guidelines established by the secretary of health and human services under section 16S of chapter 6A.

- **CHAPTER 19B** DEPARTMENT OF DEVELOPMENTAL SERVICES
- **Section 12** Community intellectual disability services

Section 12. The department shall establish a comprehensive program of community intellectual disability services which shall include state schools and other facilities of the department and shall establish standards for the development of ~~mental retardation programs~~ **programs for persons with an intellectual disability** at appropriate geographic levels to ensure access to needed services. The commissioner shall ensure citizen, consumer and family participation, through the appointment of intellectual disability citizens' advisory committees and other appropriate methods, in the oversight of intellectual disability services at all such levels, including the local level.

- **CHAPTER 19B** DEPARTMENT OF DEVELOPMENTAL SERVICES
- **Section 12A** Community Developmental Disability Services

The department, subject to appropriation, shall establish a comprehensive program of community developmental disability services, and shall establish standards for the development of programs at appropriate geographic areas to ensure access to needed services. The commissioner shall ensure citizen, consumer and family participation in the oversight of community developmental disability services at all such levels, including the local level.

- **CHAPTER 19B** DEPARTMENT OF DEVELOPMENTAL SERVICES
- **Section 13** Development and maintenance of community intellectual disability services

Section 13. The department shall develop and maintain, subject to appropriation and in accordance with its standards, comprehensive community intellectual disability services **and community developmental disability services** including specialized services for both children and adults.

Major consideration shall be given to: (a) diagnostic, evaluation and reevaluation services; (b) various treatment services; (c) various training programs; (d) preschool clinical services; (e) long and short-term day and night care residential services for various purposes; (f) intellectual disability **and developmental disability** consultation and education services to community agencies and professional personnel; (g) employment opportunities for department clients; (h) locally-based service delivery; and (i) support services to enable clients to live in apartment housing in the community.

Intellectual disability services **and community developmental disability services** shall also, where applicable, include: (a) research programs including evaluation of effectiveness and efficiency of the various programs of the department; and (b) preventive services.

The services described in this section may, unless otherwise provided in this chapter or by departmental regulation, be developed through commonwealth-operated facilities or, subject to appropriation, by contracts for services. Those

eligible for participation in any one service must be eligible for and have access to other services made available by the department. Services shall be offered without discrimination to all people who are eligible, except where specialized programs are developed such as for children or the aging, provided that within such specialized categories the services shall be equally available to all such persons who are eligible.

Notwithstanding any provision of law to the contrary, all revenues received by the community intellectual disability facilities operated by the department shall be deposited in one or more trust funds in the state treasury of which the commissioner shall be trustee and may be expended by the department for the operation and maintenance of such community intellectual disability facilities and may be further expended for the management, stabilization, and delivery of intellectual disability services by and through such community intellectual disability facilities and other affiliated service providing agencies; provided, that all expenditures from said trust funds so made shall conform to standard state accounting procedures and such further requirements as prescribed by the comptroller; provided further, that the commissioner in his capacity as trustee shall report monthly to the commissioner of administration and to the house and senate committees on ways and means such revenues and reimbursements received and expenditures made; and provided further, that whenever any such trust fund ceases to be operative, all monies remaining in such fund shall accrue to the General Fund.

- **CHAPTER 19B** DEPARTMENT OF DEVELOPMENTAL SERVICES
- **Section 15** Residential or day care services; licenses

Section 15. (a) The department shall issue for a term of two years, and may renew for like terms, a license, subject to revocation by it for cause, to any private, county or municipal facility or department or ward of any such facility which offers to the public residential or day care services and is represented as providing treatment of persons with an intellectual disability, and which is deemed by it to be responsible and suitable to meet applicable licensure standards and requirements, except that: (1) the department may license those facilities providing care but not treatment of persons with an intellectual disability; and (2) licensing by the department is not required where such residential or day care treatment is provided within an institution or facility licensed by the department of public health under the provisions of chapter one hundred and eleven. Whether or not a license is issued under clause (1), the department shall make regulations for the operation of such facilities. The department may grant the type of license which it deems suitable for the facility, department or ward. The department shall fix reasonable fees for licenses and renewal thereof.

(b) Each facility, department or ward licensed under the provisions of this section shall maintain and make available to the department such statistical and diagnostic data as may be required by the department.

(c) Each such facility, department or ward licensed by the department shall be subject to the supervision, visitation and inspection of the department, and the department may make regulations for the proper operation of such facilities, departments or wards.

(d) The department may refuse to grant, suspend, revoke, limit or restrict the applicability of or refuse to renew a license granted under this section, subject to the procedural requirements of section thirteen of chapter thirty A for any violation of its regulations or standards concerning such facility, department or ward. The department may temporarily suspend a license prior to a hearing in cases of emergency if it deems that such suspension would be in the public interest; provided, however, that upon request of an aggrieved party, a hearing pursuant to section thirteen of chapter thirty A, shall be held after the license is suspended. Any party aggrieved by a decision of the department under this section may appeal in accordance with the provisions of section fourteen of chapter thirty A.

(e) No facility nor any department or ward of any such facility, for which a license is required under paragraph (a), shall provide residential or day care services for the treatment or care of persons with an intellectual disability unless it has obtained a license under the provisions of this section. The superior court sitting in equity shall have jurisdiction, upon petition of the department, to restrain any violation of the provisions of this section or to take such other action as equity and justice may require. Whoever violates the provisions of this section shall be punished for the first offense by a fine of not more than one thousand dollars or by imprisonment for not more than two years.

(f) Each patient shall be granted protection from commercial and private exploitation of any kind. No patient shall be video taped, audio taped, photographed, interviewed or exposed to the public without either his express written consent, or that of his legal guardian. Whoever violates the provision of this paragraph shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than two and one-half years in a house of correction or by imprisonment for not more than five years in the state prison.

(g) Notwithstanding the provisions of paragraphs (a) to (f), inclusive, any child care center, family child care home, family child care system, family foster care or group care facility as defined in section 1A of chapter 15D, shall not be subject to the provisions of this section.

- **CHAPTER 19B** DEPARTMENT OF DEVELOPMENTAL SERVICES
- **Section 15 A**

(a) The department shall issue for a term of two years, and may renew for like terms, a license, subject to revocation by it for cause, to any program which

offers to the public residential or day care services and is represented as providing treatment of persons with a developmental disability, and which is deemed by it to be responsible and suitable to meet applicable licensure standards and requirements, except that: (1) the department may license those programs providing care but not treatment of persons with an intellectual disability; and (2) licensing by the department is not required where such residential or day care treatment is provided within an institution or facility licensed by the department of public health under the provisions of chapter one hundred and eleven. Whether or not a license is issued under clause (1), the department shall make regulations for the operation of such programs. The department may grant the type of license which it deems suitable for the program. The department shall fix reasonable fees for licenses and renewal thereof.

(b) Each program licensed under the provisions of this section shall maintain and make available to the department such statistical and diagnostic data as may be required by the department.

(c) Each such program licensed by the department shall be subject to the supervision, visitation and inspection of the department, and the department may make regulations for the proper operation of such programs.

(d) The department may refuse to grant, suspend, revoke, limit or restrict the applicability of or refuse to renew a license granted under this section, subject to the procedural requirements of section thirteen of chapter thirty A for any violation of its regulations or standards concerning such program. The department may temporarily suspend a license prior to a hearing in cases of emergency if it deems that such suspension would be in the public interest; provided, however, that upon request of an aggrieved party, a hearing pursuant to section thirteen of chapter thirty A, shall be held after the license is suspended. Any party aggrieved by a decision of the department under this section may appeal in accordance with the provisions of section fourteen of chapter thirty A.

(e) No program for which a license is required under paragraph (a), shall provide residential or day care services for the treatment or care of persons with a developmental disability unless it has obtained a license under the provisions of this section. The superior court sitting in equity shall have jurisdiction, upon petition of the department, to restrain any violation of the provisions of this section or to take such other action as equity and justice may require. Whoever violates the provisions of this section shall be punished for the first offense by a fine of not more than one thousand dollars or by imprisonment for not more than two years.

(f) Each person served by such a program, shall be granted protection from commercial and private exploitation of any kind. No person shall be video taped, audio taped, photographed, interviewed or exposed to the public without either the person's express written consent, or that of the person's legal guardian. Whoever violates the provision of this paragraph shall be punished by a fine of

not more than two thousand dollars or by imprisonment for not more than two and one-half years in a house of correction or by imprisonment for not more than five years in the state prison.

(g) Notwithstanding the provisions of paragraphs (a) to (f), inclusive, any child care center, family child care home, family child care system, family foster care or group care facility as defined in section 1A of chapter 15D, shall not be subject to the provisions of this section.

- **CHAPTER 19B** DEPARTMENT OF DEVELOPMENTAL SERVICES
- **Section 17** Transportation for mentally retarded persons; reimbursements for costs

Section 17. The department shall provide transportation for ~~mentally retarded persons~~ **persons with an intellectual disability or a developmental disability** with respect to educational, habilitational or day care services provided pursuant to section thirteen. The department shall take appropriate steps to ensure the safety of all persons transported under this section. If the department determines that said persons cannot be transported safely without the assistance of monitors, said transporting shall include provision for monitors. Nothing in this section shall preclude the ability of parents to serve as unpaid monitors when their children are being transported.

The department may provide reimbursement for transportation costs to any ~~mentally regarded person~~ **person with an intellectual disability or a developmental disability** competitively employed, who because of age or receipt of a high school diploma is no longer eligible for services provided under chapter seventy-one B and who is unable to use public transportation, or any other transportation such as car pools or available family transportation, due to the location of the person's residence or place of employment or due to the person's disability.

The amount of such reimbursement shall be determined by the department on a sliding fee scale. The department shall promulgate rules and regulations that limit reimbursements to reasonable transportation costs.

- **CHAPTER 19B** DEPARTMENT OF DEVELOPMENTAL SERVICES
- **Section 18** Interagency agreements with mental health department

Section 18. Subject to approval by the secretary of health and human services, the commissioner may enter into interagency agreements with the commissioner of mental health for the coordinated regulation of or for the coordinated or joint management of certain services that are required or that must be provided by both the department of developmental services and the department of mental health. Such agreement may be entered where it is determined by the

commissioners of said departments that the services require coordinated regulation to ensure development of substantially similar standards consistent with certain shared needs of ~~mentally ill and persons with an intellectual disability~~ **persons with mental illness and intellectual or developmental disabilities** or that the services will be more efficiently and effectively provided by a single, unified management system than by two separate management systems. Such services may include, without limitation, transportation, laundry, data processing, certain services to mixed populations of ~~mentally ill and mentally retarded individuals~~ **persons with mental illness and intellectual or developmental disabilities** with common needs for care and treatment or to individuals who are diagnosed as both a ~~person with an intellectual disability and mentally ill~~, **person with an intellectual or developmental disability and a mental illness**, research activities, and program monitoring. Coordinated regulation of such services may include, without limitation, such issues as restraint, charges for care, investigations and case management. Pursuant to such agreements the department of developmental services may assume responsibility for the provision of such services to the department of mental health. Such agreements may delegate responsibility to the department of mental health to provide such services to the department of developmental services. Such agreements may provide for the expenditure of appropriated funds consistent with such joint management service systems and may further provide for assignment of certain staff to such joint management service system. Such agreements shall not, however, conflict with the department of developmental services' primary responsibility for persons with an intellectual disability **or a developmental disability**, regardless of whether such persons are also mentally ill.