

The Commonwealth of Massachusetts

In the Year Two Thousand and Thirteen

Be It Enacted, by the Senate and House of Representatives, etc., as follows:

AN ACT TO PERMIT THE DEPARTMENT OF DEVELOPMENTAL SERVICES PROVIDE SERVICES TO ADULTS WITH DEVELOPMENTAL DISABILITIES

SECTION 1:

Section 1 of chapter 123B as appearing in the 2010 Official Edition, is hereby amended by inserting the following definition, following line 17:

“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.

SECTION 2:

Section 2 of chapter 123B as appearing in the 2010 Official Edition is hereby amended by adding the following paragraph, following line 13:

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.

SECTION 3:

Section 1 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by inserting, on line 7, following “persons with an intellectual disability” the words -
or persons with a developmental disability.

Said Section 1 of chapter 19B as appearing in the 2010 Official Edition is hereby further amended by striking “mental retardation services” on line 23 and inserting in place thereof the words—

services for persons with an intellectual disability

Said Section 1 of chapter 19B as appearing in the 2010 Official Edition is hereby further amended by striking “intellectual disabilities services” on lines 27 and 28, and inserting in place thereof the words—

services for persons with an intellectual disability or a developmental disability.

Section 2 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by striking “mental retardation” on line 2, and inserting in place thereof the words-

of the department of developmental services

Said Section 2 of chapter 19B as appearing in the 2010 Official Edition is hereby further amended by striking “mental retardation” on line 18.

Section 2 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by

striking “for mental retardation in the commonwealth” on line 31 and inserting in place thereof the words-

for persons with intellectual disabilities and services served for people with developmental disabilities in the commonwealth.

Section 12 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by striking “mental retardation programs” on line 4 and inserting in place thereof the words-

programs for persons with an intellectual disability

SECTION 3:

Chapter 19B as appearing in the 2010 Official Edition is hereby amended by inserting after Section 12 the following section:

Section 12A. 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.

Section 13 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by inserting, on lines 2 and 3, following “community intellectual disability services” the words—

and community developmental disability services

Section 13 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by inserting on lines 8 and 9, following “intellectual disability”, the words—

and developmental disability services

Section 13 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by inserting, on line 13 following “Intellectual disability services” the words—

and developmental disability services

SECTION 4:

Chapter 19B as appearing in the 2010 Official Edition is hereby amended by the inserting after Section 15 the following section:

Section 15A. (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.

SECTION 5:

Section 17 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by striking “mentally retarded persons” on lines 1 and 2 and inserting in place thereof the words-

persons with an intellectual disability or a developmental disability

Section 17 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by striking “mentally regarded person” on line 11 and inserting in place thereof the words-

person with an intellectual disability or a developmental disability

SECTION 6:

Section 18 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by striking “mentally ill and persons with an intellectual disability” on line 10 and inserting in place thereof the words-

persons with mental illness and intellectual or developmental disabilities

Section 18 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by striking “mentally ill and mentally retarded individuals” on lines 14 and 15 and inserting in place thereof the words-

persons with mental illness and intellectual or developmental disabilities

Section 18 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by striking “a person with an intellectual disability and mentally ill” on lines 16 and 17

and inserting in place thereof the words-

a person with an intellectual or developmental disability and a mental illness

Section 18 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by inserting, on line 29-30 following “intellectual disability”, the words-

or a developmental disability,