

NO. 174. AN ACT RELATING TO PROVIDING SERVICES TO PEOPLE WITH DEVELOPMENTAL DISABILITIES AND THEIR FAMILIES.

(S.223)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. chapter 204A is added to read:

CHAPTER 204A. DEVELOPMENTAL DISABILITIES ACT

Subchapter 1. Services to People with Developmental
Disabilities and Their Families

§ 8721. PURPOSE

It is the policy of the state of Vermont that each citizen with a developmental disability shall have the following opportunities:

- (1) To live in a safe environment with respect and dignity.
- (2) To live with family or in a home of his or her choice.
- (3) To make choices which affect his or her life.
- (4) To attend neighborhood schools, be employed and participate in activities, to the extent that this purpose is not construed to alter or extend rights or responsibilities of federal laws relating to special education.
- (5) To have access to the community support and services that are available to other citizens.

§ 8722. DEFINITIONS

As used in this chapter,

- (1) "Department" means the department of developmental and mental health services.
- (2) "Developmental disability" means a severe, chronic disability of a person that is manifested before the person reaches the age of 18 and results in:
 - (A) mental retardation, autism or pervasive developmental disorder; and
 - (B) deficits in adaptive behavior at least two standard deviations below the mean for a normative comparison group.

(3) "Family" means a group of individuals that includes a person with a developmental disability and that:

(A) is related by blood, marriage or adoption; or

(B) considers themselves a family based upon bonds of affection, which, for the purposes of this subdivision, means enduring ties that do not depend upon the existence of an economic relationship.

(4) "Person with a developmental disability" means a person who is a resident of Vermont and who has a developmental disability.

(5) "Recipient" means a person with a developmental disability or a family that has been approved to receive services or funding under criteria specified in the system of care plan.

(6) "Service" means support or service provided, funded or coordinated by the department.

(7) "System of care plan" means the plan adopted pursuant to section 8725 of this title and that describes funding and services to be provided to people with developmental disabilities and their families.

§ 8723. DEPARTMENT OF DEVELOPMENTAL AND MENTAL HEALTH

SERVICES; DUTIES

The department shall plan, coordinate, administer, monitor and evaluate state and federally funded services for people with developmental disabilities and their families within Vermont. Within the limits of available resources, the department shall:

(1) Promote the principles stated in section 8724 of this title and shall carry out all functions, powers and duties required by this chapter by collaborating and consulting with people with developmental disabilities, their families, guardians, community resources, organizations and people who provide services throughout the state.

(2) Develop and maintain an equitably and efficiently allocated statewide system of community based services that reflect the choices and needs of people with developmental disabilities and their families.

(3) Acquire and administer funding for these services and identify needed resources and legislation.

(4) Establish a statewide procedure for applying for services.

(5) Facilitate or provide pre-service or in-service training and technical assistance to service providers consistent with the system of care plan.

(6) Provide quality assessment and quality improvement support for the services provided throughout the state.

(7) Encourage the establishment and development of locally administered and locally controlled nonprofit services for people with developmental disabilities based on the specific needs of individuals and their families.

(8) Promote and facilitate participation by people with developmental disabilities and their families in activities and choices that affect their lives and in designing services that reflect their unique needs, strengths and cultural values.

(9) Promote positive images and public awareness of people with developmental disabilities and their families.

(10) Certify services that are paid for by the department.

(11) Establish a procedure for investigation and resolution of complaints regarding the availability, quality and responsiveness of services provided throughout the state.

§ 8724. PRINCIPLES OF SERVICE

Services provided to people with developmental disabilities and their families shall foster and adhere to the following principles:

(1) Children's services. Children, regardless of the severity of their disability, need families and enduring relationships with adults in a nurturing home environment. The quality of life of children with developmental disabilities, their families and communities is enhanced by caring for children within their own homes. Children with disabilities benefit by growing up in their own families; families benefit by staying together; and communities benefit from the diversity that is provided when people with varying abilities are included.

(2) Adult services. Adults, regardless of the severity of their disability, can make decisions for themselves, can live in typical homes and can contribute as citizens to the communities where they live.

(3) Full information. In order to make good decisions, people with developmental disabilities and their families need complete information about the availability, choices and costs of services, how the decision making process works, and how to participate in that process.

(4) Individualized support. People with developmental disabilities have differing abilities, needs and goals. To be effective and efficient, services must be individualized to the capacities, needs and values of each individual.

(5) Family support. Effective family support services shall be designed and provided with respect and responsiveness to the unique needs, strengths and cultural values of each family and the family's expertise regarding its own needs.

(6) Meaningful choices. People with developmental disabilities and their families cannot make good decisions without meaningful choices about how they live and the kinds of services they receive. Effective services shall be flexible so they can be individualized to support and accommodate personalized choices, values and needs and assure that each recipient is directly involved in decisions that affect that person's life.

(7) Community participation. When people with disabilities are segregated from community life, all Vermonters are diminished. Community participation is increased when people with disabilities meet their everyday needs through resources available to all members of the community.

(8) Employment. The goal of job support is to obtain and maintain paid employment in regular employment settings.

(9) Accessibility. Services must be geographically available so that people with developmental disabilities and their families are not required to move to gain access to needed services, thereby forfeiting natural community support systems.

(10) Health and safety. The safety and health of people with developmental disabilities is of paramount concern.

(11) Trained staff. In order to assure that the goals of this chapter are attained, all individuals who provide services to people with developmental disabilities and their families must receive training as required by section 8731 of this title.

(12) Fiscal integrity. The fiscal stability of the service system is dependent upon skillful and frugal management and sufficient resources to meet the needs of Vermonters with developmental disabilities.

§ 8725. SYSTEM OF CARE PLAN

(a) No later than July 1, 1997, and every three years thereafter, the department shall adopt a plan for the nature, extent, allocation and timing of services that will be provided to people with developmental disabilities and their families. Notwithstanding any other provision of law, it is not required that the plan be adopted pursuant to chapter 25 of Title 3. Each plan shall include:

(1) priorities for continuation of existing programs or development of new programs;

(2) criteria for receiving services or funding; and

(3) a process for evaluating and assessing the success of programs.

(b) Each plan shall be based upon information obtained from people with developmental disabilities, their families, guardians and people who provide the services and shall include a comprehensive needs assessment, demographic information about people with developmental disabilities, information about existing services used by individuals and their families,

characteristics of unserved and under served individuals and populations and the reasons for these gaps in service and the varying community needs and resources. The commissioner shall determine the priorities of the plan based on funds available to the department.

(c) No later than 60 days before adopting the plan, the commissioner shall submit the proposed plan to the advisory board, established in section 8732 of this title, for advice and recommendations.

(d) The department shall report annually to the governor and the general assembly regarding implementation of the plan and shall make annual revisions as needed.

§ 8726. APPLICATION FOR SERVICES; RULES

(a) No later than January 1, 1997, the department shall adopt rules that include the following:

(1) Criteria for determining whether an applicant is a person with a developmental disability.

(2) A format and procedures for processing applications for services, including time frames, emergency procedures and notice of determination.

(3) Procedures and time frames for periodic reviews of a person's eligibility and continuing need for services.

(4) Standards and procedures for billing.

(5) Complaints and appeals, including notice as required in section 8727 of this title.

(b) No later than July 1, 1997, the department shall adopt rules that include the following:

(1) Certification standards and procedures for programs for people with developmental disabilities.

(2) Training standards for staff.

(3) Standards for training and supervision of personnel who perform special care procedures.

(c) Any person with a developmental disability or a family of a person with a disability shall be provided with:

(1) Timely information and referral to community and governmental resources.

(2) An opportunity to request services.

(3) Upon request, an assessment of the most appropriate supports and resources for their needs and choices.

(4) Services and funding within the department's available resources in accordance with both the system of care plan and the person's or family's written plan of service.

(d) Any person with a developmental disability or a family who is receiving services on July 1, 1996, shall continue to receive services consistent with their needs and the system of care plan.

§ 8727. COMPLAINTS; APPEALS

(a) Notice. The department or agency or program funded by the department shall provide notice:

(1) To an applicant or the applicant's guardian, as applicable, of the rights provided under this chapter, state and federal law, and any other available rights of appeal for violations of any of those rights.

(2) To a person with a developmental disability or the person's guardian, as applicable, of any decision to deny, suspend, reduce or terminate services, prior to any action by the department or agency or program funded by the department and the procedure for appealing the decision.

(b) Appeals. A person with a developmental disability or the person's guardian may appeal a decision of the department or an agency or program funded by the department to deny or terminate eligibility for services; to deny, terminate, suspend or reduce services; or when a request is not acted upon promptly to the human services board. The fair hearing before the human services board shall be conducted pursuant to 3 V.S.A. § 3091(b), (c), (e), (f), (g) and (h)(3) and the following:

(1) The board shall not reverse or modify a decision of the department that is consistent with the system of care plan and the rules of the department, provided that the board may reverse or modify a decision of the department that the board determines is in conflict with state or federal law. The board shall not reverse or modify a decision of the department that is determined to be in compliance with applicable law, even though the board may disagree with the results effected by that decision.

(2) The secretary of human services shall review all decisions and orders of the board issued under this subsection and shall adopt a decision or order of the board except that the secretary may reverse or modify any decision or order of the board if:

(A) the board's findings of fact lack support in the record; or

(B) the decision or order implicates the validity or applicability of any rule or policy of the agency.

The secretary shall issue a written decision stating the legal, factual or policy basis for reversing or modifying a decision or order of the board. The secretary shall approve, modify or reverse a decision or order of the board within 15 days of the date of the decision or order. If the secretary fails to issue a written decision within 15 days, the decision and order of the board shall be

deemed to be approved by the secretary. A decision and order of the board under this subsection shall become the final and binding decision of the department upon approval by the secretary.

(3) The fair hearing officer:

(A) shall assure that a person with a developmental disability shall have access to legal representation; and

(B) may order an independent evaluation at no cost to the person when the fair hearing officer finds that it would aid in the resolution of the issue on appeal.

(c) Internal complaints and resolution procedures. The commissioner shall:

(1) establish procedures for the investigation and resolution of complaints by recipients or by service providers regarding the availability, quality and responsiveness of services provided.

(2) establish a procedure for the prompt and impartial resolution of disputes that are not subject to review before the human services board as provided by subsection (b) of this section, such as disputes by recipients regarding the manner, quality or accessibility of services provided by programs or agencies funded by the department.

(3) offer conflict resolution services conducted by trained mediators to assist in resolving disputes between recipients and programs and agencies funded by the department.

(4) offer arbitration to be conducted by a trained independent arbitrator for resolution of disputes that are not resolved by the procedures provided in subdivision (2) or (3) of this subsection, pursuant to which the decision of the arbitrator shall be final and binding, except to the extent that either party has other legal remedies.

(d) Procedure by next friend. The appeal and complaint procedures provided by this section may be initiated by a next friend when a person with a developmental disability is unable to initiate the procedure due to cognitive limitations and the person does not have a guardian, or there is a conflict of interest between the person with a developmental disability and the person's guardian that has resulted in failure to initiate either the appeal or complaint procedure.

§ 8728. RIGHTS OF RECIPIENTS

(a) Every person with a developmental disability who receives services has the right to:

(1) Be free from aversive procedures, devices and treatments.

(2) Privacy, dignity, confidentiality and humane care.

(3) Associate with individuals of both genders.

(4) Communicate in private by mail and telephone.

(5) Communicate in his or her primary language and primary mode of communication.

(6) Be free from retaliation for making a complaint, voicing a grievance, recommending changes in policies or exercising a legal right.

(7) Maintain contact with family, unless contact has been restricted by court order.

(8) Refuse or terminate services, except where services are required by court order.

(9) Have access to, read and challenge any information contained in any records about the person that are maintained by the department or any agency or program funded by the department and to file a written statement in the record regarding any portion of the record with which the person disagrees.

(b) Every family that receives services has the right to:

(1) Receive services without relinquishing custody of a child or children except when custody is terminated in accordance with Vermont law.

(2) Privacy and confidentiality.

(3) Communicate in the family's primary language and primary mode of communication.

(4) Be free from retaliation for making a complaint, voicing a grievance, recommending a change in policy or exercising a legal right.

(c) People committed to the care of the commissioner pursuant to subchapter 3 of chapter 206 of this title, relating to judicial proceedings, shall have all the rights provided by this section except when the commissioner restricts those rights for reasons of safety, security or treatment.

§ 8729. FAMILY SUPPORT PAYMENTS: TAX EXEMPTION

Any payment to an eligible family for the support of a person with a developmental disability constitutes a state benefit, and shall not be deemed to be income for the purposes of state taxation or of determining eligibility for any income-related state benefits.

§ 8730. SERVICE PROVIDERS; CERTIFICATION

The department shall adopt rules that provide for certification standards and procedures for programs for people with developmental disabilities funded by the department. The department shall not certify a program unless it adheres to the principles in section 8724 of this title and provides recipients with the rights in section 8728 of this title.

§ 8731. TRAINING

(a) For the purposes of this section "staff" means any person who receives compensation to provide services to one or more recipients and includes the person's supervisor. "Staff" does not include a family-directed respite worker.

(b) The department shall assure that all staff receive pre-service and in-service training consistent with the system of care plan. Family-directed respite staff shall receive pre-service and in-service training at the request of the family at no cost to the family. People with developmental disabilities and their families may participate in the training, including planning and delivery of that training.

(c) The department shall adopt rules for training standards that ensure that individual support staff understands the philosophy and values that underlie the services and that they acquire the skills necessary to implement the purposes and principles of this subchapter and to address the individual needs of the person or family for whom they provide services.

(d) All staff and all family-directed respite workers shall be trained in the requirements of 33 V.S.A. chapter 69, relating to reports of abuse, neglect, and exploitation of elderly and disabled adults, and the requirements of 33 V.S.A. chapter 49, subchapter 2, relating to reports of suspected abuse or neglect of children.

§ 8732. SPECIAL CARE NEEDS

(a) For the purposes of this section, "special care procedure" means a procedure that is necessitated by a specific medical need that a person with a developmental disability would perform but for the person's disability, provided that, in the determination of the supervising registered nurse, the procedure may be performed safely by a trained special care provider.

(b) The department shall, with the approval of the board of nursing, adopt rules that establish standards for training and supervision of personnel who perform special care procedures for people with developmental disabilities. The rules shall include training requirements, competency testing and requirements for nursing supervision.

§ 8733. ADVISORY BOARD

(a) An advisory board is created to advise the department on the status and needs of people with developmental disabilities and their families. The board shall also advise the commissioner regarding the development of the system of care plan described in section 8725 of this title and recommend legislation, rules, policies and standards to implement the system of care plan.

(b) The board shall consist of 15 members appointed by the governor: five persons shall be recipients, five members shall be advocates that represent people with developmental disabilities, and five members shall be professionals with expertise in the area of developmental disabilities.

(c) Members of the board shall be appointed for staggered terms of three years, beginning April 1 and shall serve until a successor is appointed.

(d) The board shall elect a chair from among its members. The board shall meet at least annually at the time and place determined by the chair, and at such other times and places as the chair may determine to be necessary.

(e) Members shall be entitled to reimbursement for necessary and actual expenses incurred in performance of their duties under this chapter.

Sec. 2. REPEAL

18 V.S.A. chapter 206, subchapter 1, relating to commitment and review proceedings, subchapter 2, relating to provision of services, and subchapter 4, relating to system of care plan, are repealed.

Sec. 3. GENERAL PROVISIONS

The words "commissioner of mental health and mental retardation" are amended to read "commissioner of developmental and mental health services" and the words "department of mental health and mental retardation" are amended to read "department of developmental and mental health services" wherever they appear in Vermont Statutes Annotated.

Sec. 4. 33 V.S.A. § 7502 is amended to read:

§ 7502. OFFICE OF THE LONG-TERM CARE OMBUDSMAN ESTABLISHED

The office of the long-term care ombudsman is established in the department of aging and disabilities to represent the interests of older persons and persons with disabilities under the age of 60 residing in long-term care facilities in accordance with the provisions of this chapter and the Older Americans Act. For the purposes of this section, long-term care facilities shall include facilities in which placements are made by, and facilities funded through, the department of mental health and mental retardation. Subject to the provisions of 42 U.S.C. § 3058g, the department may operate the office and carry out the program, directly or by contract or other arrangement with any public agency or nonprofit private organization. The office shall be headed by an individual, to be known as the state long-term care ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long-term care and advocacy.

Sec. 5. ALLOCATION OF APPROPRIATED FUNDS

The office of the long-term care ombudsman may serve disabled individuals under the age of 60 years who are living in long-term care facilities, in which a majority of the residents are older adults, if such service does not weaken or decrease service to older individuals covered under the Older Americans Act. All funds appropriated under the Older Americans Act shall be expended in compliance with the provisions of this act.

Sec. 6. 32 V.S.A. § 5823(a)(6) is added to read:

(6) The amount paid by the state to a family for the support of an eligible person with a developmental disability as defined in section 8722(2) of Title 18, to the extent that such amount is included in federal adjusted gross income.

Sec. 7. 32 V.S.A. § 5961(5) is amended to read:

(5) "Modified adjusted gross income" means the sum of "adjusted gross income" as defined in section 5811 of this title (but before the deduction of any trade or business loss, loss from a partnership, loss from a small business or "subchapter S" corporation, loss from a rental property, or capital loss), alimony, support money, cash public assistance and relief (not including relief granted under this subchapter), cost of living allowances paid to federal employees, allowances received by dependents of servicemen, the gross amount of any pension or annuity (including railroad retirement benefits, all payments received under the Federal Social Security Act, and all benefits under Veteran's Acts), nontaxable interest received from the state or federal government or any of its instrumentalities, workers' compensation, the gross amount of "loss of time" insurance, and the amount of capital gains excluded from adjusted gross income, less the net employment and self-employment taxes withheld from or paid by the individual (exclusive of any amounts deducted to arrive at adjusted gross income) on account of income included in that sum under this section, less any amounts paid as child support money if substantiated by receipts or other evidence that the commissioner may require. It does not include gifts from nongovernmental sources, surplus food or other relief in kind supplied by a governmental agency, or the first \$4,000.00 of income earned by a full-time student who qualifies as a dependent of the claimant under the Federal Internal Revenue Code, or the first \$4,000.00 of income received by a parent who qualifies as a dependent of the claimant under the Internal Revenue Code, or payments made by the state for foster care or to a family for the support of an eligible person with a developmental disability as defined in section 8722(2) of Title 18. If the commissioner determines, upon application by the claimant, that a relative resides with an elderly or disabled claimant for the sole purpose of providing attendant care services (as defined in section 6321 of Title 33), with or without compensation, which the claimant requires to avoid institutionalization, the commissioner shall exclude that relative's modified adjusted gross income from the claimant's household income.

Sec. 8. EFFECTIVE DATES

Sec. 6 of this act shall apply to tax years beginning on and after January 1, 1996; and Sec. 7 shall apply to property tax rebate claims filed for calendar years 1996 and after.

Approved: May 15, 1996