

No. 2011-105

AN ACT

SB 458

Amending the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), entitled "An act relating to mental health and mental retardation; authorizing county programs and amending, revising and changing the laws relating thereto and making an appropriation," updating and modernizing certain terminology.

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

Section 1. The title of the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the Mental Health and Mental Retardation Act of 1966, is amended to read:

AN ACT

Relating to mental health and **[mental retardation]** *intellectual disability*; authorizing county programs and amending, revising and changing the laws relating thereto and making an appropriation.

Section 2. Sections 101, 102, 201, 202, 301, 302, 303, 304, 305, 401 and 404 of the act are amended to read:

Section 101. Short Title.—This act shall be known and may be cited as the "Mental Health and **[Mental Retardation]** *Intellectual Disability* Act of 1966."

Section 102. Definitions.—As used in this act:

"Administrator" means the person appointed to carry out the duties specified in section 305 of this act.

"Aftercare" means services rendered to a person after his release from a facility, designed to assist such person in establishing and maintaining himself as a member of society, including foster home placement, home visiting, observation, halfway houses and outpatient care.

"Attorney for the Commonwealth" means district attorney, the Attorney General, or any attorney representing the interests of the Commonwealth.

"Benefit period" means, with respect to any individual, a period of consecutive days beginning with the first day not included in a previous benefit period on which he is furnished inpatient hospital care, and ending with the last day of the first sixty-day period thereafter during each day of which he is not an inpatient in a hospital.

"County" means a county, or a first class city.

"County program" means a mental health and **[mental retardation]** *intellectual disability* program established by a county[,], or two or more counties acting in concert and includes a complex of services providing a continuum of care in the community for the mentally disabled.

"Department" means the Department of Public Welfare.

"Designated facility" means a State operated facility named by the department, or other facility named by the administrator, for certain purposes or as a place of reception.

"Director" means the administrative head of a facility and includes superintendents.

"Facility" means any mental health establishment, hospital, clinic, institution, center, day care center or other organizational unit, or part thereof, which is devoted primarily to the diagnosis, treatment, care, rehabilitation or detention of mentally disabled persons.

"Inpatient services" means diagnosis, evaluation, classification, care, treatment or rehabilitation rendered to a mentally disabled person admitted or committed to a facility for a continuous period of twenty-four hours, or longer.

"Intellectual disability" means significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social and interpersonal skills, use of community resources, self-direction, functional academic skills, work, health and safety. The onset must occur before the individual's twenty-second birthday.

"Issuing authority" means any public official having the power and authority of an alderman, justice of the peace or magistrate.

"Local authorities" means the county commissioners of a county, or the city councils and the mayors of the first class cities, or two or more of these acting in concert.

"Mental disability" means any mental illness, mental impairment[, **mental retardation,**] or mental deficiency, which so lessens the capacity of a person to use his customary self-control, judgment and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under care as provided in this act. **[It shall include conditions and terms heretofore defined as "insanity," "unsoundness of mind," "lunacy," "mental disease," "mental disorder," "feeble-minded," "moron," "idiot" and "imbecile."]** This term shall not include senility, unless mental illness or **[mental retardation]** *an intellectual disability* is superimposed.

"Mental hospital" means a residential facility for the diagnosis, care and treatment of the mentally disabled other than **[the mentally retarded]** *those with intellectual disabilities.*

["Mental retardation" means subaverage general intellectual functioning which originates during the developmental period and is associated with impairment of one or more of the following: (1) maturation, (2) learning and (3) social adjustment.]

"Outpatient services" means diagnosis, evaluation, classification, counseling care, treatment or rehabilitation rendered under this act at a facility, to a mentally disabled person not admitted or committed thereto.

"Partial hospitalization" means diagnosis, evaluation, classification, care, treatment or rehabilitation rendered to a mentally disabled person admitted or committed to a facility for some portion of one or more twenty-four hour periods.

"Physician" means a physician licensed to practice in Pennsylvania.

"Psychiatrist" means a physician who by years of study, training and experience has achieved professional recognition and standing in the field of psychiatry.

"Psychologist" means a person who by years of study, training and experience has achieved professional recognition and standing in the field of clinical psychology.

"Secretary" means the Secretary of Public Welfare.

"Social worker" means a person who by years of study, training and experience has achieved professional recognition and standing in the field of social work.

Section 201. General Powers and Duties of the Department.—The department shall have power, and its duty shall be:

(1) To assure within the State the availability and equitable provision of adequate mental health and **[mental retardation] intellectual disability** services for all persons who need them, regardless of religion, race, color, national origin, settlement, residence, or economic or social status.

(2) To make, with the advice of the Advisory Committee for Mental Health and **[Mental Retardation] Intellectual Disability** and enforce all regulations necessary and appropriate to the proper accomplishment of the mental health and **[mental retardation] intellectual disability** duties and functions imposed by this act. Such regulations shall not become effective until the department shall have given the local authorities thirty days written notice of the proposed regulations and afforded the local authorities the opportunity for a hearing before the department on the proposed regulations.

(3) To consult with and assist each county in carrying out mental health and **[mental retardation] intellectual disability** duties and functions and where necessary after thirty days written notice to the counties affected and an opportunity for such counties for a hearing before the department and with the advice of the Advisory Committee for Mental Health and **[Mental Retardation] Intellectual Disability** to require two or more counties to join in establishing a program to provide the services required by this act.

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

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

(6) To appoint such regional mental health and **[mental retardation] intellectual disability** boards as may be necessary to advise the department in the establishment, administration and review of mental health and **[mental retardation] intellectual disability** programs.

(7) To make grants, pay subsidies, purchase service and provide reimbursement for mental health and **[mental retardation] intellectual disability** services in accordance with this act.

(8) To supervise mental health and **[mental retardation] intellectual disability** facilities, services and programs as provided by law.

Section 202. State Facilities.—(a) The department shall operate all State facilities and shall assign such functions to each as the secretary shall prescribe.

(b) The department is hereby authorized to establish, extend, operate and maintain additional facilities and provide mental health and **[mental retardation] intellectual disability** services therein. The department may also lease or otherwise acquire, through the Department of Property and Supplies, other additional facilities.

Section 301. General Powers and Duties of Local Authorities; Mental Health and **[Mental Retardation] Intellectual Disability** Program and Services.—(a) The local authorities of each county separately or in concert with another county or counties, as the secretary may approve, shall establish a county mental health and **[mental retardation] intellectual disability** program for the prevention of mental disability, and for the diagnosis, care, treatment, rehabilitation and detention of the mentally disabled and shall have power to make appropriations for such purposes. Such program shall conform with regulations of the department promulgated under section 202(2).

(b) To **[insure] ensure** the operation of a county mental health and **[mental retardation] intellectual disability** program in each county, the secretary subject to the provisions of section 201(3) shall have the power to direct the local authorities of any county to join with the local authorities of any other county to establish such program or become a part of a program existing in such other county or counties.

(c) To operate such county mental health and **[mental retardation] intellectual disability** program, the local authorities shall employ such personnel as are necessary. The selection, appointment and retention of such employees, and the termination of their employment shall be on the basis of a merit system which shall conform to minimum standards established by the department with the advice of the Advisory Committee for Mental Health and **[Mental Retardation] Intellectual Disability**. Such minimum standards shall not become effective until the department shall have given the local authorities thirty days' written notice of the proposed standards and afforded the local authorities the opportunity for a hearing before the department on the proposed minimum standards.

(d) Subject to the provisions of sections 508 and 509(5) it shall be the duty of local authorities in cooperation with the department to **[insure] ensure** that the following mental health and **[mental retardation] intellectual disability** services are available:

- (1) Short term inpatient services other than those provided by the State.
- (2) Outpatient services.
- (3) Partial hospitalization services.
- (4) Emergency services twenty-four hours per day which shall be provided by, or available within at least one of the types of services specified heretofore in this paragraph.
- (5) Consultation and education services to professional personnel and community agencies.
- (6) Aftercare services for persons released from State and County facilities.

(7) Specialized rehabilitative and training services including sheltered workshops.

(8) Interim care of **[mentally retarded persons]** *those with intellectual disabilities* who have been removed from their homes and who having been accepted, are awaiting admission to a State operated facility.

(9) Unified procedures for intake for all county services and a central place providing referral services and information.

(e) Such local authorities shall also have the power to establish the following additional services or programs for the mentally disabled:

(1) Training of personnel.

(2) Research.

(3) Any other service or program designed to prevent mental disability or the necessity of admitting or committing the mentally disabled to a facility.

(f) Services herein required or authorized may be provided either directly or by purchase of such services, except that the services required in section 301(d)(9) shall be provided directly through the county administrator.

(g) To establish local mental health and **[mental retardation]** *intellectual disability* boards in accordance with provisions of section 302.

Section 302. Establishment of County Mental Health and **[Mental Retardation]** *Intellectual Disability* Board.—(a) Except in cities of the first class, the local authorities of a county or of two or more counties participating in concert in a county mental health and **[mental retardation]** *intellectual disability* program shall appoint a Mental Health and **[Mental Retardation]** *Intellectual Disability* Board, hereinafter called the board, which shall consist of thirteen residents including, from each county, a representative of the board of county commissioners. At least two members thereof shall be physicians, and where possible one shall be a psychiatrist and the other a pediatrician. There shall also be appropriate representation drawn from:

(1) The professional fields of psychology, social work, nursing, education and religion;

(2) Local citizens' organizations active in the field of mental health;

(3) Local citizens' organizations active in the field of **[mental retardation]** *intellectual disability*;

(4) Local health and welfare planning organizations;

(5) Local general hospitals; and

(6) Other interested community groups.

Where two or more counties are participating in concert in said program, the members of said board shall be selected substantially on a proportionate basis as to population, providing however that each county, irrespective of population, shall have at least one member on the board.

(b) Each member shall be appointed for a period of three years. The initial appointment of members of the board shall be for overlapping periods of three, two and one years. In making the initial appointments, in so far as possible, one-third of the members shall be appointed to each of the overlapping periods. Any vacancies occurring in the membership of the board shall be filled by the local authorities for the unexpired period. The local authorities may remove any member of the board during his period of service for cause only. The members shall serve without compensation other

than reimbursement for travel and other actual expenses incurred in connection with called meetings of the board.

(c) A majority of the board members shall constitute a quorum. The members shall select a chairman from among themselves. Each board shall meet at least once each quarter, and may, by majority vote of the membership, establish more frequent regular meetings not exceeding one per month. Special meetings shall be held on call of the chairman, and it shall be the duty of the chairman to call a special meeting upon the written request of one-third or more of the members, not including vacancies of the board.

(d) In cities of the first class, a mental health and **[mental retardation] intellectual disability** board shall be appointed, and the members shall hold office, under the provisions of the city charter.

Section 303. Duties of the County Mental Health and **[Mental Retardation] Intellectual Disability** Board.—(a) The County Mental Health and **[Mental Retardation] Intellectual Disability** Board shall have the power and its duty shall be:

(1) To review and evaluate the county's mental health and **[mental retardation] intellectual disability** needs, services, facilities and special problems in relation to the local health and welfare needs, services and programs.

(2) Except in cities of the first class, to recommend to local authorities not less than two persons for the position of administrator. Such persons shall meet the standards of professional skill and experience as the department may establish by regulation.

(3) To develop, together with the administrator, annual plans for the mental health and **[mental retardation] intellectual disability** programs required by sections 301 and 509.

(4) To make recommendations to the local authorities regarding the program and any other matters relating to mental health and **[mental retardation] intellectual disability** services in the county, including purchase of service contracts and the extent of funds required to implement the program.

(5) To review performance under the mental health and **[mental retardation] intellectual disability** program and to recommend a system of program evaluation.

(b) The functions of this board may be performed by a multi-purpose board acting in the health and welfare field, if the local authorities so elect with appropriate representation as specified in section 302(a), in so far as possible, and subject to the approval of the department.

Section 304. County Mental Health and **[Mental Retardation] Intellectual Disability** Administrator; Appointment.—Except in cities of the first class, where the administrator shall be appointed under the merit system, the local authorities shall appoint a county mental health and **[mental retardation] intellectual disability** administrator from a list of not less than two names submitted by the County Mental Health and **[Mental Retardation] Intellectual Disability** Board. If, thirty days after the county board has submitted a list to the local authorities, an appointment has not been made because of a tie vote or other failure of the local authorities to make such appointment, the same shall be made by the secretary after

consultation with the local authorities. The appointment of the administrator, by whomever made, may be terminated by the local authorities, provided, that no appointment made by the secretary under this section shall be terminated without the approval of a majority of the County Mental Health and **[Mental Retardation] Intellectual Disability** Board.

Section 305. Duties of the Administrator.—The county mental health and **[mental retardation] intellectual disability** administrator shall have the power and his duty shall be:

(1) To administer the county mental health and **[mental retardation] intellectual disability** program.

(2) To insure that county mental health and **[mental retardation] intellectual disability** services required by this act are available.

(3) To provide staff services to the County Mental Health and **[Mental Retardation] Intellectual Disability** Board.

(4) To make such reports to the department in such form and containing such information as the department may require.

(5) To develop, together with the County Mental Health and **[Mental Retardation] Intellectual Disability** Board, annual plans for the mental health and **[mental retardation] intellectual disability** programs required by this act.

(6) To submit to local authorities annual plans and estimated costs for the provision of services, establishment and operation of facilities, and other related matters for review, approval and transmittal to the department.

(7) To review and evaluate facilities, and to cooperate with the department in the maintenance of established standards.

(8) To maintain effective liaison with governmental and private community health and welfare agencies and organizations and State operated facilities.

(9) To submit an annual report to the local authorities, the board and the department reporting all activities of the program and his administration thereof.

(10) To analyze and evaluate mental health and **[mental retardation] intellectual disability** needs and services in the county and recommend improvements to the County Mental Health and **[Mental Retardation] Intellectual Disability** Board and local authorities, conduct such research studies, and take such steps and adopt such measures as are necessary for the proper discharge of his duties.

Section 401. Applications for Admission or Commitment; to Whom Made.—(a) Any mentally disabled person who desires care in a facility may make appropriate application directly to any facility willing and able to receive him, or to the administrator of the county where the person is or resides, for placement in a facility.

(b) Any person authorized by this act to do so may make application on behalf of a mentally disabled person directly to any facility willing and able to receive such person. If no such facility is available, or if public funds will or may be expended to pay all or part of the cost of care of such person under a county mental health and **[mental retardation] intellectual disability** program, application shall be made to the administrator of the county where the person is or resides for placement in a facility, except that

applications for detention under section 405 must be made to the administrator.

(c) Whenever a court commits any person under any provision of this act, it may commit such person directly to a facility willing and able to receive him; otherwise, the court shall commit to a designated local or State facility, or to the Veterans Administration or other agency of the United States upon receipt of a certificate that the person is eligible for such hospitalization and there is available space for his care.

Section 404. Commitment on Application by Relative, etc.; Physicians' Certificates; Review.—(a) A written application for commitment to a facility may be made in the interest of any person who appears to be mentally disabled and in need of care. It may be made by a relative, guardian, friend, individual standing in loco parentis to the person to be committed, or by the executive officer or an authorized agent of a governmental or recognized nonprofit health or welfare organization or agency or any responsible person.

(b) Such application shall be accompanied by the certificates of two physicians who have examined the person whose commitment is sought, within one week of the date of the certificates, and who have found that, in their opinion, such person is mentally disabled and in need of care. In the case of a mentally retarded person, the physician's certification shall be accompanied by the report of a psychologist. No person shall be committed hereunder if any certificate is dated more than thirty days prior to the date of commitment, except that if the mental disability consists of **[mental retardation] intellectual disability**, the certificates may be dated not more than three months prior to the date of commitment. The application, certificates and the report, if any, shall be signed and sworn to or affirmed.

(c) The director may receive the person named in the application and detain him until discharge in accordance with the provisions of this act. When application is made by any person other than a relative or guardian, the director upon reception of the person named in the application shall notify the appropriate relative or guardian of such person of the commitment.

(d) Every commitment made under this section except those to the Veterans Administration or other agency of the United States Government, shall be reviewed at least annually by a committee appointed by the director from the professional staff of the facility wherein the person is detained, to determine whether continued care and commitment is necessary. Said committee shall make written recommendations to the director which shall be filed at the facility, and be open to inspection and review by the department, and such other persons as the secretary, by regulation, may permit.

Section 3. Section 509 of the act, amended May 17, 1972 (P.L.300, No.78), is amended to read:

Section 509. State and County Grants and Payments.—The department, subject to the provisions of section 503, shall have the power, and its duty shall be:

(1) From State and Federal funds, to make annual grants to counties to defray part of the cost of county programs authorized by this act and approved by the department, in the amount of ninety percent of the excess of

all such approved expenditures for such programs over the amount paid for the same purpose from any public or private source directly to participating counties, facilities or individuals.

(2) To prescribe the time at which the counties shall submit to the department annual plans and annual estimates of expenditures, and revisions thereof, to carry out mental health and **[mental retardation] intellectual disability** programs. Such plans and estimates shall contain such information as the secretary by regulation shall prescribe.

(3) Upon approval of an annual plan and the estimated expenditures for a mental health and **[mental retardation] intellectual disability** program, to compute an annual grant in accordance with the formula established in clause (1) of this section.

(4) To pay the annual grant in four quarterly installments. The moneys received in any quarter may be used at any time during the year. The first installment shall be for the quarter beginning July 1 and ending September 30; the second installment shall be for the quarter beginning October 1 and ending December 31; the third installment shall be for the quarter beginning January 1 and ending March 31; and the fourth installment shall be for the quarter beginning April 1 and ending June 30. Each installment shall be paid at the beginning of the quarter only if the department is satisfied that the county is complying with the regulations of the department prescribing minimum mental health and **[mental retardation] intellectual disability** services, minimum standards of performance of mental health and **[mental retardation] intellectual disability** services and minimum standards of mental health and **[mental retardation] intellectual disability** personnel administration on a merit basis.

(5) In the event that sufficient funds to pay the full amount of the grants to which the counties may be entitled under the provisions of this section have not been appropriated, to distribute State funds among the counties by a formula reasonably designed to achieve the objectives of this act, provided however, that in such event the counties' financial obligations under this act shall be reduced in accordance with the same formula and the counties shall be required to provide only those services for which sufficient funds are available.

(6) To review grants against actual expenditures at any time and to make appropriate adjustments in subsequent grants. If a grant overpayment cannot be recovered through such an adjustment for any reason, the department shall effect a refund of such overpayment from the county.

(7) For the purpose of this act, the contribution with respect to services, equivalent to the employer's tax established by the Federal Social Security Act shall be the first obligation against any State funds received by the counties for their use or authorized under this act and shall first be paid therefrom.

Section 4. Sections 510 and 511 of the act are amended to read:

Section 510. Supplemental Grants.—The department may make additional grants to any county participating in an approved mental health and **[mental retardation] intellectual disability** plan to assist in establishing the services provided for in such plan, for the first three years of operation of such plan. Said grant shall be supplemental to grants authorized by section

509 but shall not exceed in any one year, ten percent of the grant made under that section.

Section 511. Interim Grants for Mental Health and **[Mental Retardation] Intellectual Disability** Services.—(a) From State and Federal funds, the department may make grants to any county, or combination of counties, or to any facility for all or part of the cost of services designed to carry out the provisions of article III of this act.

(b) Such grants, whose amounts shall be calculated in accordance with a formula to be determined by the department, shall terminate with respect to a particular county, or combination of counties, on the approval of the initial plan for a mental health and **[mental retardation] intellectual disability** program or on the deadline for the establishment of all such programs, as provided in section 512, whichever is earlier.

Section 5. Section 512 of the act, amended June 28, 1968 (P.L.280, No.135), is amended to read:

Section 512. Deadline for Establishment of County Mental Health and **[Mental Retardation] Intellectual Disability** Program; Failure to Comply with Minimum Standards; Penalties.—(a) Each county acting alone or in participation with other counties as provided in section 301 shall, by January 1, 1969, submit to the department for approval a plan for a county mental health and **[mental retardation] intellectual disability** program. The information and material upon which such plan shall be formulated for submission to the department shall be published and distributed to the counties by the Advisory Committee for Mental Health and **[Mental Retardation] Intellectual Disability** on or before August 1, 1968.

(b) If, by July 1, 1969, any county has not submitted any plan or if although it shall have submitted a plan, it has not made such alterations or additions to such plan as to secure approval by the department, the department shall provide mental health and **[mental retardation] intellectual disability** services for such county.

(c) If at any time after the approval of a plan, the department determines, after hearing, that such county or combination of participating counties is not complying with regulations promulgated under section 202(2) and that, as a result, the needs of the mentally disabled persons are not being adequately met, the department shall provide mental health and **[mental retardation] intellectual disability** services for such county or counties.

(d) When in pursuance of this section, the department shall provide the mental health and **[mental retardation] intellectual disability** services of a county or counties, such county or counties shall be charged and shall pay the county share computed in accordance with section 509, and, to compensate the State for its expenses incident to the administration of the county program, an additional fifteen percent of the net cost to the Commonwealth for the county program. The amount due the Commonwealth shall be paid by the county or counties within twelve months after receipt of the department's notice of the amount due. All sums collected from the county under this section, in whatever manner such collections are made, shall be paid into the State Treasury and shall be credited to the current appropriations to the department to carry out State obligations under this section.

(e) The department shall relinquish the administration of the mental health and **[mental retardation]** *intellectual disability* program of the county upon establishment or reinstatement as the case may be, of an approved county mental health and **[mental retardation]** *intellectual disability* program in compliance with this act and thereafter grants and payments authorized herein may be made by the department.

Section 6. This act shall take effect immediately.

APPROVED—The 22nd day of November, A.D. 2011

TOM CORBETT