

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
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BY HER EXCELLENCY
JANE SWIFT
GOVERNOR

EXECUTIVE ORDER NO. 429

GOVERNOR'S COMMISSION ON MENTAL RETARDATION

(Reestablishing the Commission
initially established by Executive Order 356;
amended by Executive Order 371; and
reestablished by Executive Order 396)

WHEREAS; it is the responsibility of the Commonwealth to safeguard the health, safety and well-being of its citizens with mental retardation;

WHEREAS, the Commonwealth recognizes the value inherent in its receiving ideas and maintaining communication with family members, advocates, public officials, and other members of the public interested in enhancing the well-being of people with mental retardation;

WHEREAS, it is important that people with mental retardation, their families and the public be provided with a forum for discussion and resolution of disputes that may otherwise not be addressed by the Department of Mental Retardation pursuant to its statutory responsibilities;

WHEREAS, the Commonwealth's network of individualized services designed to address the wide variety of needs of people with mental retardation must be continually evaluated to ensure its quality and effectiveness;

WHEREAS, the Governor's Commission on Mental Retardation, initially established by Executive Order Number 356 and reestablished by Executive Order 396, continues to be an important part of the Commonwealth's efforts to enhance the well-being of people with mental retardation; and

WHEREAS, the Commission has recommended that it continue to exist to assure quality services and to protect the rights of people with mental retardation;

NOW, THEREFORE, I, Jane Swift, Governor of the Commonwealth, by virtue of the authority vested in me as Supreme Executive Magistrate, do hereby reestablish the Governor's Commission on Mental Retardation, as follows:

ARTICLE I. Purpose and Scope of Commission

1.1 The purpose of the Commission shall be:

(a) to examine the quality and comprehensiveness of the Commonwealth's program of services designed to address the wide variety of needs of people with mental retardation;

(b) to discuss and mediate, to the extent practicable, systemic disputes raised by individuals with mental retardation, their families or guardians, for which no other forum exists, or which have not been adequately resolved by existing avenues of redress;

(c) to provide a forum for the review of public policy as it affects persons with mental retardation, and to ensure that the Commonwealth fully complies with its obligations to meet their special needs;

(d) to inform the public, as well as those at the highest levels of state government, of how the Commonwealth can improve its services to citizens with mental retardation;

(e) to work cooperatively with the Department of Mental Retardation in connection with its mission to support people with mental retardation, and to act as an advocate for the Department, with the public and those within state government, for the purpose of ensuring the quality and effectiveness of Department programs designed to achieve its mission; and

(f) to support and review implementation of the recommendations of the Commission made pursuant to its responsibilities under 1.1 (b) above, after discussion with and receipt of information from the Commissioner of Mental Retardation and other concerned individuals and organizations.

ARTICLE II. Membership and Structure of Commission

- 2.1 The Commission shall consist of no fewer than eleven (11) and no more than thirteen (13) members appointed by the Governor. Members will be appointed for a term of three (3) years.
- 2.2 The Governor shall appoint a Chair of the Commission from among its members.
- 2.3 Members of the Commission shall be persons with demonstrated interest, experience, and expertise in mental retardation. No employee of the Department of Mental Retardation may be a member of the Commission. Members shall be considered to be special state employees subject to the provisions of Chapter 268A of the Massachusetts General Laws.
- 2.4 Members of the Commission shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties as members.
- 2.5 Members of the Commission may be removed by the Governor for good cause shown, including but not limited to failure to attend Commission meetings, as evidenced by absence from three or more Commission meetings in anyone calendar year. Voting by proxy or absentee ballot shall not be permitted at Commission meetings, or otherwise in the work of the Commission.
- 2.6 Vacancies in the membership of the Commission shall be filled by the Governor.
- 2.7 There shall be a full-time Administrator of the Commission who shall be selected by the Governor. The Administrator shall be an employee of the Commonwealth, and shall be compensated for the performance of his or her duties. The Administrator shall have knowledge of the mental retardation service system and agencies delivering such services and, have experience in administration and quality assurance. The Administrator shall hold no other public office.

ARTICLE III. Powers and Duties of Commission Generally

- 3.1 The Commission shall adopt such internal procedures as are appropriate for the effective performance of its duties. Decisions of the Commission shall be by majority vote of those present, with a quorum of six members present required for such decisions. Any procedural issues that may arise during Commission meetings shall be resolved by reference to Robert's Rules of Order.
- 3.2 The Commission shall hold public hearings or other educational forums, in Boston or such other locations as it shall determine, from time to time, as the Commission deems are necessary. The subject of such hearings shall include, but shall not be limited to, the quality of the health, safety and well-being of the Commonwealth's citizens with mental retardation; the quality of publicly-funded services available to such citizens; and the extent to which the private sector and the community at large provide opportunities for persons with mental retardation. The results of such hearings shall be reported to the Commissioner of the Department of Mental Retardation, the Secretary of the Executive Office of Health and Human Services, and the Governor.
- 3.3 The Commission, the Administrator, or any person they may designate, shall have access at any and all reasonable times to any mental retardation facility, residence, program, or part thereof, and to all relevant records, reports, materials, and employees, in order to allow them to enhance their appreciation of the needs of persons with mental retardation, and to monitor the quality with which such needs are being met.
- 3.4 The Commission may make recommendations to the Governor as to how the quality of life of citizens with mental retardation may be improved by legislation and/or regulation.
- 3.5 The Commission, and/or the Administrator, may, from time to time, issue reports on matters affecting the health, safety and well-being of persons with mental retardation, including reports on the results of activities conducted in accordance with Section 3.3 above, and may make recommendations for corrective action in response to findings concerning those activities, as well as to matters that have been reviewed in accordance with Article IV, below. The agencies to which these reports and/or recommendations are directed shall respond to the Commission within a reasonable time frame.

ARTICLE IV. Commission's Powers to Serve as Ombudsman and to Resolve Disputes

- 4.1 (a) The Administrator, acting on behalf of the Commission, shall be empowered to hear concerns regarding the provision of services to persons with mental retardation that have not been resolved, within a reasonable time, at the local level or at the state level at the Department of Mental Retardation. Prior to presenting a matter to the Commission, the Administrator shall consider whether the matter can be addressed through other means including conciliation. In every case, the Administrator shall ensure that the Department of Mental Retardation has had a full opportunity to resolve the matter prior to presentation of the matter to the Commission.
- (b) The Commission shall not consider matters that should be addressed pursuant to:
 - (i) statute or regulations concerning Individual or Family Support Plans;
 - (ii) regulations requiring complaint investigation by the Department;
 - (iii) statutes or regulations governing abuse or neglect of persons with mental retardation; or
 - (iv) any matter for which there exists another mechanism instituted by law for the

purpose of addressing the complaint. The Administrator, however, may monitor the processing of such matters to determine whether the person presenting the matter has made full use of existing procedures, and if not, fully inform him or her of such procedures. If the matter has not been resolved pursuant to the procedures described in (i) through (iv) above, then the Administrator may refer the matter to the Commission for its review.

- (c) The Commission shall not consider matters presented by employees of the Department of Mental Retardation when the matter complained of is the proper subject of union grievance proceedings, civil service laws, or other processes designed to deal with conditions of employment.

4.2 In performance of their duties as outlined in the preceding Articles, the Commission, its Administrator, or their designee may request and obtain such information from agencies of the Commonwealth as is necessary to perform their duties, unless otherwise prohibited by law,(*1) including:

- (a) information, data, and reports generated by the existing quality assurance mechanism of the Department of Mental Retardation;
- (b) information, data, and reports generated by the Health Care Financing Administration or other federal or state agencies pursuant to Title XIX or other federal statutes or regulations; and
- (c) information, data, and reports generated as a result of investigations conducted by the Department of Mental Retardation, the Department of Public Health, the Disabled Persons Protection Commission, the Inspector General's Office, or any other state agency.

4.3 The Commission, its Administrator, or their designee may also:

- (a) visit, inspect, and make firsthand appraisals of mental retardation facilities, residences, and programs, with specific attention to the safety, security, and quality of care provided;
- (b) evaluate information and reports from consumers, their families or representatives, or others, regarding the effectiveness and adequacy of services and quality assurance mechanisms; and
- (c) review facilities, residences, and programs for the purpose of determining whether problems that have been the subject of past complaints have been rectified.

4.4 The Commission and its designees shall be bound by any limitations on the use or release of information imposed by law upon the party furnishing such information to the Commission and its designees.

4.5 The Commission shall be empowered to mediate and to recommend resolution of disputes between the Department of Mental Retardation and those it supports. In such cases, the Commission may act only after it has, by majority vote, directed the Administrator to bring the matter to the attention of the Commissioner of the Department of Mental Retardation for a response, and has determined that no adequate remedy has been forthcoming to address the matter in dispute.

(*1) The Department of Mental Retardation has determined that disclosure to the Commission of

otherwise confidential information about its consumers shall be in the consumers' best interest pursuant to M.G.L. c.123B, § 17.

- 4.6 If the Department of Mental Retardation fails to implement a mediated agreement or recommended resolution reached pursuant to 4.1 above, after notice to the Commissioner who shall be provided with an opportunity to respond, the Commission is authorized to make recommendations directly to the Governor concerning the matter at issue. Such recommendations to the Governor shall be public information.
- 4.7 The Administrator shall coordinate the mediation and dispute resolution functions of the Commission. Twice annually, the Administrator shall issue an analysis of matters brought to the Commission's attention. Such analysis shall be provided by the Commission to the Governor, the Secretary of the Executive Office of Health and Human Services, and to the Commissioner of the Department of Mental Retardation. This analysis shall be public information.

ARTICLE V. Miscellaneous

- 5.1 To maximize its capability of realizing its mission, the Commission shall be located in the office of the Governor, and shall report directly to the Governor.
- 5.2 The Commission and the Administrator shall be provided with staff, secretarial support and other resources necessary to meet their responsibilities
- 5.3 The Department of Mental Retardation and the Commission shall work collaboratively for the benefit of people with mental retardation.
- 5.4 The Commission, including the Administrator and its staff, shall exist for three years from the date this Executive Order is signed.

Given at the Executive Chamber in Boston this
10th day of May in the year two thousand one.

Jane Swift
(Acting) Governor

William Francis Galvin
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS