

**CHAPTER 318 (HB 449)**

AN ACT relating to facilities serving persons with mental illness and mental retardation, and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 210.045 is amended to read as follows:

(1) The Cabinet for Health Services shall:

(a)~~[(1)]~~ Maintain, operate, and assume program responsibility for all state institutions and facilities for mental retardation;

(b)~~[(2)]~~ Provide rehabilitation services for mentally retarded persons through educational and training programs;

(c)~~[(3)]~~ Provide medical and allied services to mentally retarded persons and their families;

(d)~~[(4)]~~ Encourage and assist communities to develop programs and facilities in the field of mental retardation;

(e)~~[(5)]~~ Sponsor or carry out research, or both, in the field of mental retardation;~~[and]~~

(f)~~[(6)]~~ Assist other governmental and private agencies in the development of programs and services for mentally retarded persons and their families and for the prevention of mental retardation, and coordinate programs and services so developed;

(g) ***Provide written notice to the Legislative Research Commission of its intent to propose legislation to permit immediate or gradual closure of any state-owned or operated facility that provides residential services to persons with mental retardation or other developmental disabilities at least sixty (60) days prior to the next legislative session; and***

(h) ***1. Provide written notice by registered mail to each resident, his or her immediate family, if known, and his or her guardian of its intent to propose legislation to permit immediate or gradual closure of any state-operated facility that provides residential services to persons with mental retardation or other developmental disabilities at least sixty (60) days prior to the next legislative session; and***

***2. Include in the written notice provided under this paragraph that the resident, the resident's immediate family, his or her guardian, or any other interested party with standing to act on behalf of the resident has the right to pursue legal action relating to the notice provisions of this paragraph and relating to the closure of the facility.***

(2) ***Any state-owned or operated facility or group home that provides residential services to persons with mental retardation or other developmental disabilities and that has been funded by the General Assembly in a specific biennium, shall not be closed, nor shall the Cabinet for Health Services announce the pending closure of the facility, during the same biennium except through the provisions specified by subsection (1) of this section.***

- (3) *The Cabinet for Health Services may close any state-owned or operated facility that provides residential services to persons with mental retardation or other developmental disabilities upon the effective date of an adopted act of legislation.*
- (4) *When a demonstrated health or safety emergency exists for a facility or a federal action that requires or necessitates a gradual or immediate closure exists for the facility, the cabinet may seek relief from the requirements of this section in the Circuit Court of the county where the facility is located. In these situations:*
  - (a) *The cabinet shall provide written notice by registered mail to each resident, the resident's immediate family, if known, and his or her guardian, at least ten (10) days prior to filing an emergency petition in the Circuit Court; and*
  - (b) *All interested parties, including the cabinet, the resident, his or her immediate family, his or her guardian, or other interested parties with standing to act on behalf of the resident shall have standing in the proceedings under this subsection.*
- (5) *Any resident, family member or guardian, or other interested parties, as defined by KRS 387.510(12) with standing to act on behalf of the resident who wishes to challenge the decision or actions of the Cabinet for Health Services regarding the notice requirements of subsection (1) of this section shall have a cause of action in the Circuit Court of the county in which the facility is located, or in Franklin Circuit Court. In addition to other relief allowable by law, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section.*
- (6) *Any resident, family member or guardian, or other interested parties, as defined by KRS 387.510(12) with standing to act on behalf of the resident may challenge the decision of the state to close a facility in a de novo hearing in the Circuit Court of the county in which the facility is located, or in Franklin Circuit Court. In addition to other relief allowable by law, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section..*

SECTION 2. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

*A court hearing as provided under subsection (6) of Section 1 of this Act shall consider each of the following items relevant to the closure of the facility:*

- (1) *Estimated timelines for the implementation of the closure of the facility;*
- (2) *The types and array of available and accessible community-based services for individuals with mental retardation and other developmental disabilities and their families;*
- (3) *The rights of individuals with mental retardation and other developmental disabilities;*
- (4) *The process used to develop a community living plan;*
- (5) *Individual and community monitoring and safeguards to protect health and safety;*
- (6) *The responsibilities of state and local governments;*

- (7) *The process used to transfer ownership or the state's plan to reuse the property; and*
- (8) *Other issues identified by the cabinet, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident that may affect the residents, their families, employees, and the community.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

*For any facility that the cabinet has announced plans for closure prior to the effective date of this Act, the cabinet shall be subject to the notice provisions of Section 1 of this Act within ten (10) days of the effective date of this Act. The cabinet shall delay proceedings toward closure until the proceedings for all hearings permitted under Section 1 of this Act have been completed.*

Section 4. KRS 216B.455 is amended to read as follows:

- (1) A certificate of need shall be required for all psychiatric residential treatment facilities. The application for a certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed psychiatric residential treatment facility and each of the following agencies, organizations, or facilities located in the service area of the proposed facility:
  - (a) Regional interagency council for children with emotional disability or severe emotional disability as defined in KRS 200.509;
  - (b) Department for Social Services;
  - (c) Local school districts;
  - (d) Psychiatric hospitals; and
  - (e) Any other agency, organization, or facility deemed appropriate by the cabinet.
- (2) All psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.
- (3) All psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations, *or the Council on Accreditation, or any other accrediting body with comparable standards that is recognized by the state.*
- (4) A psychiatric residential treatment facility shall not be located in or on the grounds of a psychiatric hospital.
- (5) The total number of psychiatric residential treatment facility beds shall not exceed sixteen (16) beds in any area development district with less than 275,000 population; thirty-two (32) beds in any area development district with 275,000 to 550,000 population; and forty-eight (48) beds in any area development district with over 550,000 population.

Section 5. Whereas the closure of state residential facilities for individuals with mental retardation or other developmental disabilities has an immediate and significant impact on residents and their families, an emergency is declared to exist, and Sections 1 to 3 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Became law April 5, 2000, without Governor's signature**