CHAPTER 141

(HB 558)

AN ACT relating to intellectual disabilities.

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

➔Section 1. The General Assembly recognizes the negative impact that the use of certain words and phrases can have on some of the Commonwealth's most exceptional citizens. The General Assembly states its intention that henceforth it shall attempt to utilize language that references, but does not equate, an individual to a disability. The General Assembly furthermore expresses its intention that the rest of the citizens of the Commonwealth, when referencing intellectual disabilities, will join it in eschewing those words and phrases that can operate to treat a person and an intellectual disability interchangeably.

➔Section 2. KRS 17.150 is amended to read as follows:

(1) Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, mental hospital, or institution for the ***intellectually disabled*** ~~[retarded]~~; Department of Kentucky State Police; state fire marshal; Board of Alcoholic Beverage Control; Cabinet for Health and Family Services; Transportation Cabinet; Department of Corrections; Department of Juvenile Justice; and every other person or criminal justice agency, except the Court of Justice and the Department for Public Advocacy, public or private, dealing with crimes or criminals or with delinquency or delinquents, when requested by the cabinet, shall:

(a) Install and maintain records needed for reporting data required by the cabinet;

(b) Report to the cabinet as and when the cabinet requests all data demanded by it, except that the reports concerning a juvenile delinquent shall not reveal the juvenile's or the juvenile's parents' identity;

(c) Give the cabinet or its accredited agent access for purpose of inspection; and

(d) Cooperate with the cabinet to the end that its duties may be properly performed.

(2) Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection if prosecution is completed or a determination not to prosecute has been made. However, portions of the records may be withheld from inspection if the inspection would disclose:

(a) The name or identity of any confidential informant or information which may lead to the identity of any confidential informant;

(b) Information of a personal nature, the disclosure of which will not tend to advance a wholesome public interest or a legitimate private interest;

(c) Information which may endanger the life or physical safety of law enforcement personnel; or

(d) Information contained in the records to be used in a prospective law enforcement action.

(3) When a demand for the inspection of the records is refused by the custodian of the record, the burden shall be upon the custodian to justify the refusal of inspection with specificity. Exemptions provided by this section shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this section.

(4) Centralized criminal history records are not subject to public inspection. Centralized history records mean information on individuals collected and compiled by the Justice and Public Safety Cabinet from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision, and release. The information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto. Nothing in this subsection shall apply to documents maintained by criminal justice agencies which are the source of information collected by the Justice and Public Safety Cabinet. Criminal justice agencies shall retain the documents and no official thereof shall willfully conceal or destroy any record with intent to violate the provisions of this section.

(5) The provisions of KRS Chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section.

(6) The secretary of justice and public safety shall adopt the administrative regulations necessary to carry out the provisions of the criminal history record information system and to insure the accuracy of the information based upon recommendations submitted by the commissioner, Department of Kentucky State Police.

(7) The Administrative Office of the Courts may, upon suitable agreement between the Chief Justice and the secretary of justice and public safety, supply criminal justice information and data to the cabinet. No information, other than that required by KRS 27A.350 to 27A.420 and 27A.440, shall be solicited from a circuit clerk, justice or judge, court, or agency of the Court of Justice unless the solicitation or request for information is made pursuant to an agreement which may have been reached between the Chief Justice and the secretary of justice and public safety.

➔Section 3. KRS 43.050 is amended to read as follows:

(1) The Auditor constitutes an agency independent of the administrative departments enumerated in KRS 12.020, it being the policy of the General Assembly to provide for the independent auditing of the accounts, financial transactions, and performance of all spending agencies of the state through a disinterested auditor, who is entirely independent of the state administration whose affairs he is called upon to audit.

(2) The Auditor shall:

(a) Audit annually, and at such other times as may be deemed expedient, the accounts of all state agencies, all private and semiprivate agencies receiving state aid or having responsibility for the handling of any state funds, the accounts, records, and transactions of the budget units, and the general accounts of the state.

(b) Make a complete audit and verification of all moneys handled for the account of the state government by local officials charged with the collection of fees or other money for or on behalf of the state, when an audit is demanded in writing by the Legislative Research Commission, the secretary of the Finance and Administration Cabinet or the Governor, and may make an audit when it is not so demanded.

(c) Examine periodically the performance, management, conduct, and condition of all asylums, prisons, institutions for the ***intellectually disabled***~~[mentally retarded]~~, and eleemosynary institutions; public works owned, operated, or partly owned by the state, or in the conduct or management of which the state has any financial interest or legal power; and state agencies. The examinations shall give special attention to the faithful and economical application of any money appropriated by the state to the institution, public works, or state agency examined, or of any money in which the state has an interest.

(d) Examine annually the management and condition of the offices of the Finance and Administration Cabinet, the State Treasurer, and the chief state school officer, to determine whether the laws regulating their duties are being fully complied with, and all money received by them for the state fully accounted for.

(e) Examine, at least biennially, the Finance and Administration Cabinet's compliance with this section and KRS 48.111 and 56.800 to 56.823. Within sixty (60) days of the completion of each examination, the Auditor shall report his findings and recommendations to the Capital Projects and Bond Oversight Committee.

(f) Audit periodically all state revenue collections, and, if he finds that collections are not being satisfactorily made, report that fact to the authority whose duty it is to make the collections.

(g) Make special audits and investigations when required by the Governor.

(h) Investigate the means of accounting for, controlling, and insuring the safe custody of all property of the state, and verify the existence and condition of such property charged to, or held in the custody of any state agency.

(i) Audit the statements of financial condition and operations of the state government, and certify in writing the results of the audit and examination with the comments he deems necessary for the information of the General Assembly.

(j) Report immediately in writing to the Governor, each member of the Legislative Research Commission, and the secretary of the Finance and Administration Cabinet, any unauthorized, illegal, irregular, or unsafe handling or expenditure of state funds, or other improper practice of financial administration, or evidence that any such handling, expenditure, or practice is contemplated, and any obstruction of the Auditor or his agents during the conduct of any audit or investigation of a state agency.

(k) Assist the Legislative Research Commission at hearings and investigations conducted by it and cooperate with the Legislative Research Commission in the preparation of its reports to the General Assembly.

(l) Keep accounts showing the costs of his own operations and of each separate audit and investigation made by him, and the accounts he deems necessary to provide a record of warrants of the state outstanding as of the end of each calendar month.

(3) The Auditor may investigate and examine into the conduct of all state and county officers who are authorized to receive, collect, or disburse any money for the state, or who manage or control any property belonging to the state or in which the state is interested, or who make estimates or records that are used as a basis by any state agency in the disbursement of public funds.

(4) The Auditor shall not be responsible for the keeping of any accounts of the state, except accounts relating to his own operations, and records of outstanding warrants. He shall not be responsible for the collection of any money due the state, or for the handling or custody of any state funds or property except in the process of counting and verifying the amounts of the funds or property in the course of the audits provided for in this section.

➔Section 4. KRS 43.080 is amended to read as follows:

(1) The Auditor and his authorized agents shall have access to and may examine all books, accounts, reports, vouchers, correspondence files, records, money and property of any state agency. Every officer or employee of any such agency having such records or property in his possession or under his control shall permit access to and examination of them upon the request of the Auditor or any agent authorized by him to make such request.

(2) The Auditor and his assistants shall have access at all times to the papers, books and records of the asylums, prisons, institutions for the ***intellectually disabled*** ~~[mentally retarded]~~ and eleemosynary institutions, and public works that he is authorized to examine, and of any county officer who receives or disburses county funds.

(3) The Auditor may require information on oath from any person touching any matters relative to any account that the Auditor is required to state, audit or settle. The Auditor may administer the oath himself, or have it done by any officer authorized to administer an oath.

(4) The Auditor and his assistants may issue process and compel the attendance of witnesses before them, and administer oaths and compel witnesses to testify in any of the investigations the Auditor is authorized to make.

➔Section 5. KRS 43.990 is amended to read as follows:

(1) Any officer who prevents, attempts to prevent or obstructs an examination by the Auditor, under the provisions of paragraph (c) of subsection (2) of KRS 43.050, or of subsection (3) of KRS 43.050, into his official conduct, or the conduct or condition of the office in his charge or with which he is connected, except when the office constitutes a state agency, is guilty of a high misdemeanor, and, upon conviction on indictment in the Franklin Circuit Court, shall be fined five hundred dollars ($500) and removed by the Governor. Any person, other than an officer, who prevents, attempts to prevent or obstructs such an examination shall be fined one thousand dollars ($1,000).

(2) If the Auditor fails or refuses without good cause to perform the duties imposed upon him by KRS 43.060, he shall be fined not less than two hundred and fifty dollars ($250) nor more than one thousand dollars ($1,000) for each offense.

(3) Any county officer who prevents, attempts to prevent or obstructs an examination by the Auditor, under KRS 43.070, into his official conduct, or the conduct or condition of the office in his charge or with which he is connected, is guilty of a high misdemeanor, and shall, upon indictment and conviction in the Franklin Circuit Court, be fined five hundred dollars ($500). Any person, other than a county officer, who prevents, attempts to prevent or obstructs such an examination shall be fined one thousand dollars ($1,000).

(4) Any officer or other person who fails or refuses to permit the access and examination provided for in subsection (1) of KRS 43.080, or who interferes with such examination, shall be fined not less than one hundred dollars ($100), or imprisoned in the county jail for not less than one (1) month nor more than twelve (12) months, or both. Each refusal by an officer shall constitute a separate offense.

(5) Any person who has custody of any papers, books or records of an asylum, prison, institution for the ***intellectually disabled*** ~~[mentally retarded]~~ or eleemosynary institution or public works, other than a state

agency, that the Auditor is authorized to examine under paragraph (c) of subsection (2) of KRS 43.050, under subsection (3) of KRS 43.050, and under subsection (2) of KRS 43.080, who fails or refuses, when called upon by the Auditor for that purpose, to permit him to inspect any of such papers, books or records, shall, upon conviction on indictment in the Franklin Circuit Court, be fined not more than five hundred dollars ($500) and be subject to removal by the Governor.

(6) Any person who refuses to be sworn when required by the Auditor to be sworn for the purpose mentioned in subsection (3) of KRS 43.080 shall be fined not more than one hundred dollars ($100).

(7) Any witness called by the Auditor under subsection (4) of KRS 43.080 who fails, without legal excuse, to attend or testify shall be fined not more than two hundred and fifty dollars ($250).

➔Section 6. KRS 61.165 is amended to read as follows:

(1) Except as otherwise specified for the Capitol and Capitol Annex in KRS 61.167, a policy for smoking in governmental office buildings or workplaces shall be adopted by state government. This policy shall apply to all state-owned or state-operated office buildings, workplaces, and facilities, including but not limited to state-operated hospitals and residential facilities for the ***intellectually disabled*** ~~[mentally retarded]~~, state-operated veterans' nursing homes and health facilities, and any correctional facility owned by, operated by, or under the jurisdiction of the state.

(2) Except as otherwise specified for the Capitol and Capitol Annex in KRS 61.167, any policy relating to smoking in state office buildings or workplaces shall be by executive order of the Governor or action of the General Assembly, and shall:

(a) 1. Require the governmental authority to provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; and

2. Favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority; or

(b) Prohibit indoor smoking.

(3) Except as otherwise specified for the Capitol and Capitol Annex in KRS 61.167, a policy for smoking in governmental office buildings or workplaces may be adopted by county, municipal, special district, urban-county, charter county, or consolidated local governments. Any policy adopted under this subsection may apply to any office buildings, workplaces, or facilities that are owned by, operated by, or under the jurisdiction of that government, including but not limited to jails and detention facilities. Any policy relating to smoking in governmental office buildings or workplaces of counties, municipalities, special districts, urban-county governments, charter county governments, or consolidated local governments shall be adopted in writing by the legislative body of the government and shall:

(a) 1.

Require the government authority to provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; and

2. Favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority; or

(b) Prohibit indoor smoking.

(4) Each board of regents or trustees for each of the state postsecondary education institutions shall adopt a written policy relating to smoking in all buildings owned by, operated by, or under the jurisdiction of the state postsecondary education institutions that shall:

(a) 1. Provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; and

2. Favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority; or

(b) Prohibit indoor smoking.

➔Section 7. KRS 158.135 is amended to read as follows:

(1) As used in this section, unless the context otherwise requires:

(a) "State agency children" means:

1. a. Those children of school age committed to or in custody of the Cabinet for Health and Family Services and placed, or financed by the cabinet, in a Cabinet for Health and Family Services operated or contracted institution, treatment center, facility, including those for therapeutic foster care and excluding those for nontherapeutic foster care; or

b. Those children placed or financed by the Cabinet for Health and Family Services in a private facility pursuant to child care agreements including those for therapeutic foster care and excluding those for nontherapeutic foster care;

2. Those children of school age in home and community-based services provided as an alternative to intermediate care facility services for the ***intellectually disabled*** ~~[mentally retarded]~~; and

3. Those children committed to or in custody of the Department of Juvenile Justice and placed in a department operated or contracted facility or program.

(b) "Current costs and expenses" means all expenditures, other than for capital outlay and debt service, which are in excess of the amount generated by state agency children under the Support Education Excellence in Kentucky funding formula pursuant to KRS 157.360. These expenditures are necessary to provide a two hundred thirty (230) day school year, smaller teacher pupil ratio, related services if identified on an individual educational plan, and more intensive educational programming.

(c) "Therapeutic foster care" means a remedial care program for troubled children and youth that is in the least restrictive environment where the foster parent is trained to implement planned, remedial supervision and care leading to positive changes in the child's behavior. Children served in this placement have serious emotional problems and meet one (1) or more of the following criteria:

1. Imminent release from a treatment facility;

2. Aggressive or destructive behavior;

3. At risk of being placed in more restrictive settings, including institutionalization; or

4. Numerous placement failures.

(2) (a) Unless otherwise provided by the General Assembly in a budget bill, any county or independent school district that provides elementary or secondary school services to state agency children shall be reimbursed through a contract with the Kentucky Educational Collaborative for State Agency Children. The school services furnished to state agency children shall be equal to those furnished to other school children of the district.

(b) The Department of Education shall, to the extent possible within existing appropriations, set aside an amount of the state agency children funds designated by the General Assembly in the biennial budget to reimburse a school district for its expenditures exceeding twenty percent (20%) of the total amount received from state and federal sources to serve a state agency child.

(3) The General Assembly shall, if possible, increase funding for the education programs for state agency children by a percentage increase equal to that provided in the biennial budget for the base funding level for each pupil in the program to support education excellence in Kentucky under KRS 157.360 and, if applicable, by an amount necessary to address increases in the number of state agency children being served.

(4) The Kentucky Educational Collaborative for State Agency Children shall make to the chief state school officer the reports required concerning school services for state agency children, and shall file with the Cabinet for Health and Family Services unit operating or regulating the institution or day treatment center, or contracting for services, in which the children are located a copy of the annual report made to the chief state school officer.

(5) The Cabinet for Health and Family Services shall contract with a university-affiliated training resource center utilizing all funds generated by the children in state agency programs, except Oakwood and Hazelwood funds, and the funds in the Kentucky Department of Education budget, pursuant to this section, as well as any other educational funds for which all Kentucky children are entitled. The total of these funds shall be utilized to

provide educational services through the Kentucky Educational Collaborative for State Agency Children established in KRS 605.110.

(6) Notwithstanding the provisions of any other statute, the Kentucky Educational Collaborative for State Agency Children shall operate a two hundred thirty (230) day school program.

➔Section 8. KRS 164.2865 is amended to read as follows:

The General Assembly hereby finds and declares that:

(1) Meningococcal meningitis disease is a potentially fatal infectious and contagious bacterial disease that can be spread by coughing and sharing drinking glasses;

(2) Since the disease often presents itself with flu-like symptoms, many victims of the disease die before it is even diagnosed. From 1991 to 1997, the cases of meningococcal meningitis disease in young adults fifteen (15) to twenty-four (24) years of age nearly doubled;

(3) Survivors of meningococcal meningitis disease may have severe after-effects of the disease, including ***an intellectual disability*** ~~[mental retardation]~~, hearing loss, and loss of limbs;

(4) College freshmen residing on campus in dormitories or residence halls have a risk of meningococcal meningitis disease over seven (7) times higher than do college students overall;

(5) The meningococcal meningitis disease vaccine has been shown to be eighty-five percent (85%) to ninety percent (90%) effective in producing antibodies against the most common strains of the disease; and

(6) The Centers for Disease Control and Prevention (CDC) recommends that college freshmen and their parents be educated about meningococcal meningitis disease and that vaccination should be made easily available to freshmen and undergraduate students who want to reduce their risk of disease.

➔Section 9. KRS 194A.010 is amended to read as follows:

(1) The cabinet is the primary state agency for operating the public health, Medicaid, certificate of need and licensure, and mental health and ***intellectual disability*** ~~[mental retardation]~~ programs in the Commonwealth. The function of the cabinet is to improve the health of all Kentuckians, including the delivery of population, preventive, reparative, and containment health services in a safe and effective fashion, and to improve the functional capabilities and opportunities of Kentuckians with disabilities. The cabinet is to accomplish its function through direct and contract services for planning and through the state health plan and departmental plans for program operations, for program monitoring and standard setting, and for program evaluation and resource management.

(2) The cabinet is the primary state agency responsible for leadership in protecting and promoting the well-being of Kentuckians through the delivery of quality human services. Recognizing that children are the Commonwealth's greatest natural resource and that individuals and their families are the most critical component of a strong society, the cabinet shall deliver social services to promote the safety and security of Kentuckians and preserve their dignity. The cabinet shall promote collaboration and accountability among local, public, and private programs to improve the lives of families and children, including collaboration with the Council on Accreditation for Children and Family Services or its equivalent in developing strategies consistent with best practice standards for delivery of services. The cabinet also shall administer income-supplement programs that protect, develop, preserve, and maintain individuals, families, and children in the Commonwealth.

➔Section 10. KRS 194A.735 is amended to read as follows:

(1) Subject to sufficient funding, the Cabinet for Health and Family Services and the Justice and Public Safety Cabinet, in consultation with any other state agency as appropriate, shall develop and implement a homelessness prevention pilot project that offers institutional discharge planning on a voluntary basis to persons exiting from state-operated or supervised institutions involving mental health and foster care programs, and persons serving out their sentences in any state-operated prison in Oldham County.

(2) The primary goal of the project shall be to prepare a limited number of persons in a foster home under supervision by the Cabinet for Health and Family Services, state-operated prison in Oldham County under supervision by the Justice and Public Safety Cabinet, and mental health facility under supervision by the Cabinet for Health and Family Services for return or reentry into the community, and to offer information about any necessary linkage of the person to needed community services and supports.

(a) The pilot project shall be jointly supported by each of the cabinets. One (1) office for the pilot project shall be located in a family resource center or Department for Community Based Services building in Jefferson County, due to its urban population, and one (1) office shall be located in Clinton, Cumberland, McCreary, or Wayne County, due to its rural population. The pilot project office in Jefferson County shall serve persons intending to locate in Jefferson County who are being released from a mental health facility under supervision by the Cabinet for Health and Family Services and persons intending to locate in Jefferson County who are being released after serving out their sentences from any state-operated prison in Oldham County. The pilot project office in Clinton, Cumberland, McCreary, or Wayne County shall serve persons intending to locate in Clinton, Cumberland, McCreary, or Wayne County who are aging out of the foster care program following placement in Clinton, Cumberland, McCreary, or Wayne County.

(b) Within thirty (30) days following July 13, 2004, the cabinets shall supply each pilot project director with the collection of information on available employment, social, housing, educational, medical, mental health, and other community services in the county. The information shall include but not be limited to the service area of each public and private provider of services, the capacity of each provider to render services to persons served by the pilot project, the fees of each provider, contact names and telephone numbers for each provider, and an emergency contact for each provider.

(c) Within thirty (30) days following July 13, 2004, the cabinets and directors shall begin a program of education for each of the cabinet and foster home and mental health and appropriate state-operated prison facility staff who will participate in the development of a discharge plan for volunteer participants under this section.

(3) The pilot project shall operate on a voluntary basis. One (1) of each five (5) persons eligible for discharge or completing their sentence shall be offered the opportunity to participate in the pilot program. This offer shall be made at least six (6) months prior to discharge. There shall be a cap on the number of persons served in each office, to be determined by available funding and staffing requirements.

(a) The staff member designated as the homelessness prevention coordinator for each foster home or mental health facility shall maintain a file for each volunteer participant in the foster home or mental health facility, relating to the participant's employment, social, housing, educational, medical, and mental health needs. This file shall be updated from time to time as appropriate and pursuant to an administrative regulation promulgated by the cabinet in accordance with KRS Chapter 13A that establishes standards for the discharge summary. The staff member designated as the homelessness prevention coordinator for the appropriate state-operated prison participating in the pilot project shall maintain a file containing appropriate forms completed and updated by each person voluntarily participating in the pilot project, relating to the information provided under subsection (6) of this section. All applicable privacy and confidentiality laws shall be followed in assembling and maintaining this file.

(b) Six (6) months prior to the expected date of discharge, the discharge coordinator for each foster home and mental health and state-operated prison facility shall contact the homelessness prevention director for Jefferson County or the homelessness prevention director for Clinton, Cumberland, McCreary, or Wayne County, as appropriate, about the pending release of the volunteer participant who is eligible for discharge from a foster home or mental health facility or who will have served out his or her sentence in a state-operated prison facility that is participating in the pilot project. The director shall visit the home or facility, as appropriate, to assist with the preparation of the final comprehensive discharge plan.

(c) The director and the discharge coordinator for each participating foster home and mental health and state-operated prison facility shall work together to develop a final comprehensive discharge plan that addresses the employment, health care, educational, housing, and other needs of the person to be released, subject to the consent of the person and the funding and staffing capabilities of the director. Information provided by the coordinator may include and be limited to, subject to the staffing and funding capabilities of the coordinator, information provided by the person to be released on a form or forms made available by the foster home or mental health or state-operated prison facility. The discharge plan shall contain but not be limited to the following:

1. Estimated discharge date from the foster home, state-operated prison facility, or mental health facility;

2. Educational background of the person to be released, including any classes completed or skills obtained by the person while in the foster home, state-operated prison facility, or mental health facility;

3. The person's medical and mental health needs;

4. Other relevant social or family background information;

5. A listing of previous attempts to arrange for post-release residence, employment, medical and mental health services, housing, education, and other community-based services for the person; and

6. Other available funding and public programs that may reimburse any services obtained from a provider listed in the discharge plan. Every effort shall be made in the discharge plan to refer the person to a provider that has agreed to an arranged public or private funding arrangement.

No discharge plan shall be completed unless the written consent, consistent with state and federal privacy laws, to compile the information and prepare the plan has been given by the person eligible for release who has volunteered to participate in the pilot program.

(4) The director shall assist with the completion of a final comprehensive discharge plan that may include but need not be limited to the following:

(a) Availability of appropriate housing, including but not limited to a twenty-four (24) month transitional program, supportive housing, or halfway house. Planning discharge to an emergency shelter is not appropriate to meet the housing needs of the person being discharged from foster care, a state-operated prison facility, or a mental health facility;

(b) Access to appropriate treatment services for participants who require follow-up treatment;

(c) Availability of appropriate employment opportunities, including assessment of vocational skills and job training; and

(d) Identification of appropriate opportunities to further education.

(5) Discharge planning shall be individualized, comprehensive, and coordinated with community-based services.

(a) Each discharge plan shall create a continuous, coordinated, and seamless system that is designed to meet the needs of the person.

(b) Staff of the foster home or facility and staff of community-based services providers shall be involved in the planning.

(c) Each facility shall utilize, wherever possible, community-based services within the facility to establish familiarity of the person residing in the facility with the community services.

(6) The Department of Corrections shall, through an administrative regulation promulgated in accordance with KRS Chapter 13A, develop a discharge plan that addresses the education; employment, technical, and vocational skills; and housing, medical, and mental health needs of a person who is to be released after serving out his or her sentence in a state-operated prison facility participating in the pilot project.

(7) Appropriate data about discharge placements and follow-up measures shall be collected and analyzed. The analysis shall be included in the interim and final reports of the pilot program specified in subsection (8) of this section.

(8) Each homelessness prevention director shall have regular meetings with appropriate state cabinet and agency staff to review the pilot project and make recommendations for the benefit of the program. Each director shall be assisted by a local advisory council composed of local providers of services and consumer advocates who are familiar with homelessness prevention issues. Priority for membership on the advisory council shall be given to existing resources and regional mental health and substance abuse advisory councils at the discretion of the director.

(9) Each cabinet shall collect data about the discharge plans, referrals, costs of services, and rate of recidivism related to the homelessness prevention program, and shall submit an annual report to the Governor and the Legislative Research Commission no later than October 1 that summarizes the data and contains recommendations for the improvement of the program. The annual report also shall be forwarded to the Kentucky Commission on Services and Supports for Individuals with ***an Intellectual Disability***~~[Mental~~

~~Retardation]~~ and Other Developmental Disabilities, Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses, and the Kentucky Housing Corporation Homelessness Policy Council.

➔Section 11. KRS 205.470 is amended to read as follows:

(1) As used in this section, "aging caregiver" means an individual age sixty (60) or older who provides care for an individual with ***an intellectual disability***~~[mental retardation]~~ or other developmental disability.

(2) If state, federal, or other funds are available, the Kentucky Department for Mental Health and Mental Retardation Services shall, in cooperation with the Department for Aging and Independent Living and the Department for Medicaid Services, establish a centralized resource and referral center designed as a one-stop, seamless system to provide aging caregivers with information and assistance with choices and planning for long-term supports for individuals with ***an intellectual disability***~~[mental retardation]~~ or developmental disability.

(3) The center created in subsection (2) of this section shall provide but not be limited to the following services:

(a) Comprehensive information on available programs and services, including but not limited to:

1. Residential services;
2. Employment training;
3. Supported employment;
4. Behavioral support;
5. Respite services;
6. Adult day health or adult day social services;
7. Support coordination;
8. Home or environmental modifications;
9. Community living services, including an attendant, and assistance with homemaking, shopping, and personal care;
10. Support groups in the community;
11. Psychiatric services;
12. Consumer-directed options;
13. Attorneys or legal services to assist with will preparation; and
14. The impact of inheritance on government benefits and options, including establishing a special needs trust;

(b) Printed material and Internet-based information related to:

1. Options for future planning;
2. Financial and estate planning;
3. Wills and trusts; and
4. Advance directives and funeral and burial arrangements; and

(c) Referral to community resources.

(4) The center created in subsection (2) of this section shall operate a toll-free number at least during regular business hours and shall publish information required in paragraph (a) of subsection (3) of this section and a description of services provided by the center on a cabinet Web site.

(5) The center created in subsection (2) of this section shall make the information listed in subsection (3) of this section available to the support broker and any representative of an individual who is participating in a Medicaid consumer-directed option.

(6) The center shall use electronic information technology to track services provided and to follow-up with individuals served and provide additional information or referrals as needed.

(7) The department may contract with a private entity to provide the services required under subsections (2) and (3) of this section.

(8) The cabinet may provide services identified in subsection (3) of this section to individuals of any age who are caregivers of individuals with mental retardation or developmental disability.

(9) Prior to January 1, 2008, the department shall submit a report to the Interim Joint Committee on Health and Welfare that includes but is not limited to the following information:

(a) The number of individuals who contacted the center;

(b) A description of the categories of questions asked by individuals calling the center; and

(c) A summary of the services provided, including the community resources to which individuals were referred.

➔Section 12. KRS 205.560 is amended to read as follows:

(1) The scope of medical care for which the Cabinet for Health and Family Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section. Within the limitations of any appropriation therefor, the provision of complete upper and lower dentures to recipients of Medical Assistance Program benefits who have their teeth removed by a dentist resulting in the total absence of teeth shall be a mandatory class in the scope of medical care. Payment to a dentist of any Medical Assistance Program benefits for complete upper and lower dentures shall only be provided on the condition of a preauthorized agreement between an authorized representative of the Medical Assistance Program and the dentist prior to the removal of the teeth. The selection of another class or other classes of medical care shall be recommended by the council to the secretary for health and family services after taking into consideration, among other things, the amount of federal and state funds available, the most essential needs of recipients, and the meeting of such need on a basis insuring the greatest amount of medical care as defined in KRS 205.510 consonant with the funds available, including but not limited to the following categories, except where the aid is for the purpose of obtaining an abortion:

(a) Hospital care, including drugs, and medical supplies and services during any period of actual hospitalization;

(b) Nursing-home care, including medical supplies and services, and drugs during confinement therein on prescription of a physician, dentist, or podiatrist;

(c) Drugs, nursing care, medical supplies, and services during the time when a recipient is not in a hospital but is under treatment and on the prescription of a physician, dentist, or podiatrist. For purposes of this paragraph, drugs shall include products for the treatment of inborn errors of metabolism or genetic conditions, consisting of therapeutic food, formulas, supplements, or low-protein modified food products that are medically indicated for therapeutic treatment and are administered under the direction of a physician, and include but are not limited to the following conditions:

1. Phenylketonuria;

2. Hyperphenylalaninemia;

3. Tyrosinemia (types I, II, and III);

4. Maple syrup urine disease;

5. A-ketoacid dehydrogenase deficiency;

6. Isovaleryl-CoA dehydrogenase deficiency;

7. 3-methylcrotonyl-CoA carboxylase deficiency;

8. 3-methylglutaconyl-CoA hydratase deficiency;

9. 3-hydroxy-3-methylglutaryl-CoA lyase deficiency (HMG-CoA lyase deficiency);

10. B-ketothiolase deficiency;

11. Homocystinuria;

12. Glutaric aciduria (types I and II);
13. Lysinuric protein intolerance;
14. Non-ketotic hyperglycinemia;
15. Propionic acidemia;
16. Gyrate atrophy;
17. Hyperornithinemia/hyperammonemia/homocitrullinuria syndrome;
18. Carbamoyl phosphate synthetase deficiency;
19. Ornithine carbamoyl transferase deficiency;
20. Citrullinemia;
21. Arginosuccinic aciduria;
22. Methylmalonic acidemia; and
23. Argininemia;

(d) Physician, podiatric, and dental services;

(e) Optometric services for all age groups shall be limited to prescription services, services to frames and lenses, and diagnostic services provided by an optometrist, to the extent the optometrist is licensed to perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Eyeglasses shall be provided only to children under age twenty-one (21);

(f) Drugs on the prescription of a physician used to prevent the rejection of transplanted organs if the patient is indigent;

(g) Nonprofit neighborhood health organizations or clinics where some or all of the medical services are provided by licensed registered nurses or by advanced medical students presently enrolled in a medical school accredited by the Association of American Medical Colleges and where the students or licensed registered nurses are under the direct supervision of a licensed physician who rotates his services in this supervisory capacity between two (2) or more of the nonprofit neighborhood health organizations or clinics specified in this paragraph;

(h) Services provided by health-care delivery networks as defined in KRS 216.900;

(i) Services provided by midlevel health-care practitioners as defined in KRS 216.900; and

(j) Smoking cessation treatment interventions or programs prescribed by a physician, advanced registered nurse practitioner, physician assistant, or dentist, including but not limited to counseling, telephone counseling through a quitline, recommendations to the recipient that smoking should be discontinued, and prescription and over-the-counter medications and nicotine replacement therapy approved by the United States Food and Drug Administration for smoking cessation.

(2) Payments for hospital care, nursing-home care, and drugs or other medical, ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount of the payment to the cost of providing the services or supplies. It shall be one (1) of the functions of the council to make recommendations to the Cabinet for Health and Family Services with respect to the bases for payment. In determining the rates of reimbursement for long-term-care facilities participating in the Medical Assistance Program, the Cabinet for Health and Family Services shall, to the extent permitted by federal law, not allow the following items to be considered as a cost to the facility for purposes of reimbursement:

(a) Motor vehicles that are not owned by the facility, including motor vehicles that are registered or owned by the facility but used primarily by the owner or family members thereof;

(b) The cost of motor vehicles, including vans or trucks, used for facility business shall be allowed up to fifteen thousand dollars ($15,000) per facility, adjusted annually for inflation according to the increase in the consumer price index-u for the most recent twelve (12) month period, as determined by the United States Department of Labor. Medically equipped motor vehicles, vans, or trucks shall be exempt from the fifteen thousand dollar ($15,000) limitation. Costs exceeding this limit shall not be

reimbursable and shall be borne by the facility. Costs for additional motor vehicles, not to exceed a total of three (3) per facility, may be approved by the Cabinet for Health and Family Services if the facility demonstrates that each additional vehicle is necessary for the operation of the facility as required by regulations of the cabinet;

(c) Salaries paid to immediate family members of the owner or administrator, or both, of a facility, to the extent that services are not actually performed and are not a necessary function as required by regulation of the cabinet for the operation of the facility. The facility shall keep a record of all work actually performed by family members;

(d) The cost of contracts, loans, or other payments made by the facility to owners, administrators, or both, unless the payments are for services which would otherwise be necessary to the operation of the facility and the services are required by regulations of the Cabinet for Health and Family Services. Any other payments shall be deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health and Family Services. Interest paid to the facility for loans made to a third party may be used to offset allowable interest claimed by the facility;

(e) Private club memberships for owners or administrators, travel expenses for trips outside the state for owners or administrators, and other indirect payments made to the owner, unless the payments are deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health and Family Services; and

(f) Payments made to related organizations supplying the facility with goods or services shall be limited to the actual cost of the goods or services to the related organization, unless it can be demonstrated that no relationship between the facility and the supplier exists. A relationship shall be considered to exist when an individual, including brothers, sisters, father, mother, aunts, uncles, and in-laws, possesses a total of five percent (5%) or more of ownership equity in the facility and the supplying business. An exception to the relationship shall exist if fifty-one percent (51%) or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(3) No vendor payment shall be made unless the class and type of medical care rendered and the cost basis therefor has first been designated by regulation.

(4) The rules and regulations of the Cabinet for Health and Family Services shall require that a written statement, including the required opinion of a physician, shall accompany any claim for reimbursement for induced premature births. This statement shall indicate the procedures used in providing the medical services.

(5) The range of medical care benefit standards provided and the quality and quantity standards and the methods for determining cost formulae for vendor payments within each category of public assistance and other recipients shall be uniform for the entire state, and shall be designated by regulation promulgated within the limitations established by the Social Security Act and federal regulations. It shall not be necessary that the amount of payments for units of services be uniform for the entire state but amounts may vary from county to county and from city to city, as well as among hospitals, based on the prevailing cost of medical care in each locale and other local economic and geographic conditions, except that insofar as allowed by applicable federal law and regulation, the maximum amounts reimbursable for similar services rendered by physicians within the same specialty of medical practice shall not vary according to the physician's place of residence or place of practice, as long as the place of practice is within the boundaries of the state.

(6) Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.

(7) To the extent permitted by federal law, no medical assistance recipient shall be recertified as qualifying for a level of long-term care below the recipient's current level, unless the recertification includes a physical examination conducted by a physician licensed pursuant to KRS Chapter 311 or by an advanced registered nurse practitioner licensed pursuant to KRS Chapter 314 and acting under the physician's supervision.

(8) If payments made to community mental health centers, established pursuant to KRS Chapter 210, for services provided to the ***intellectually disabled*** ~~[mentally retarded]~~ exceed the actual cost of providing the service, the balance of the payments shall be used solely for the provision of other services to the ***intellectually disabled*** ~~[mentally retarded]~~ through community mental health centers.

(9) No long-term-care facility, as defined in KRS 216.510, providing inpatient care to recipients of medical assistance under Title XIX of the Social Security Act on July 15, 1986, shall deny admission of a person to a bed certified for reimbursement under the provisions of the Medical Assistance Program solely on the basis of the person's paying status as a Medicaid recipient. No person shall be removed or discharged from any facility solely because they became eligible for participation in the Medical Assistance Program, unless the facility can demonstrate the resident or the resident's responsible party was fully notified in writing that the resident was being admitted to a bed not certified for Medicaid reimbursement. No facility may decertify a bed occupied by a Medicaid recipient or may decertify a bed that is occupied by a resident who has made application for medical assistance.

(10) Family-practice physicians practicing in geographic areas with no more than one (1) primary-care physician per five thousand (5,000) population, as reported by the United States Department of Health and Human Services, shall be reimbursed one hundred twenty-five percent (125%) of the standard reimbursement rate for physician services.

(11) The Cabinet for Health and Family Services shall make payments under the Medical Assistance program for services which are within the lawful scope of practice of a chiropractor licensed pursuant to KRS Chapter 312, to the extent the Medical Assistance Program pays for the same services provided by a physician.

(12) The Medical Assistance Program shall use the form and guidelines established pursuant to KRS 304.17A-545(5) for assessing the credentials of those applying for participation in the Medical Assistance Program, including those licensed and regulated under KRS Chapters 311, 312, 314, 315, and 320, any facility required to be licensed pursuant to KRS Chapter 216B, and any other health care practitioner or facility as determined by the Department for Medicaid Services through an administrative regulation promulgated under KRS Chapter 13A.

(13) Dentists licensed under KRS Chapter 313 shall be excluded from the requirements of subsection (12) of this section. The Department for Medicaid Services shall develop a specific form and establish guidelines for assessing the credentials of dentists applying for participation in the Medical Assistance Program.

➔Section 13. KRS 205.6317 is amended to read as follows:

(1) As used in this section:

(a) "Supports for Community Living Waiver Program" means funding from the Department for Medicaid Services to serve individuals with ***an intellectual disability***~~[mental retardation]~~ or other developmental disabilities who qualify for intermediate care and choose to live in a community-based setting and includes funding for a self-determination model, as recommended by the Commission on Services and Supports for Individuals with ***an Intellectual Disability***~~[Mental Retardation]~~ and Other Developmental Disabilities under KRS 210.577(2), that provides the ability for the individual receiving services and supports to personally control, with appropriate assistance, a targeted amount of dollars; and

(b) "Slots" means the dedication of provider or financial resources for services to persons with mental retardation or other developmental disabilities.

(2) The Department for Medicaid Services shall develop and implement flexible reimbursement and payment strategies that reflect the individually determined needs for services and supports by persons with ***an intellectual disability***~~[mental retardation]~~ and other developmental disabilities participating in the Supports for Community Living Waiver Program.

(3) The Department for Medicaid Services shall allocate slots to the fourteen (14) community mental health regions based on percentage of total population.

(4) The Department for Medicaid Services shall reallocate underutilized slots to address statewide needs and shall reallocate slots in emergency situations to address unmet needs for services and supports.

(5) The Department for Medicaid Services shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the requirements of this section.

(6) Funds for the Supports for Community Living Waiver Program shall be appropriated only for direct services to qualified individuals and any unexpended funds shall not lapse but shall be carried forward to the next fiscal year and shall be used for the same purpose.

➔Section 14. KRS 210.040 is amended to read as follows:

The Cabinet for Health and Family Services shall:

(1) Exercise all functions of the state in relation to the administration and operation of the state institutions for the care and treatment of persons with mental illness;

(2) Establish or acquire, in accordance with the provisions of KRS 56.440 to 56.550, other or additional facilities for psychiatric care and treatment of persons who are or may become state charges;

(3) Cooperate with other state agencies for the development of a statewide mental health program looking toward the prevention of mental illness and the post-institutional care of persons released from public or private mental hospitals;

(4) Provide for the custody, maintenance, care, and medical and psychiatric treatment of the patients of the institutions operated by the cabinet;

(5) Provide psychiatric consultation for the state penal and correctional institutions, and for the state institutions operated for children or for persons with ***an intellectual disability*** ~~[mental retardation]~~;

(6) Administer and supervise programs for the noninstitutional care of persons with mental illness;

(7) Administer and supervise programs for the care of persons with chronic mental illness, including but not limited to provision of the following:

(a) Identification of persons with chronic mental illness residing in the area to be served;

(b) Assistance to persons with chronic mental illness in gaining access to essential mental health services, medical and rehabilitation services, employment, housing, and other support services designed to enable persons with chronic mental illness to function outside inpatient institutions to the maximum extent of their capabilities;

(c) Establishment of community-based transitional living facilities with twenty-four (24) hour supervision and community-based cooperative facilities with part-time supervision; provided that, no more than either one (1) transitional facility or one (1) cooperative facility may be established in a county containing a city of the first class or consolidated local government with any funds available to the cabinet;

(d) Assurance of the availability of a case manager for each person with chronic mental illness to determine what services are needed and to be responsible for their provision; and

(e) Coordination of the provision of mental health and related support services with the provision of other support services to persons with chronic mental illness;

(8) Require all providers who receive public funds through state contracts, state grants, or reimbursement for services provided to have formalized quality assurance and quality improvement processes, including but not limited to a grievance procedure; and

(9) Supervise private mental hospitals receiving patients committed by order of a court.

➔Section 15. KRS 210.045 is amended to read as follows:

(1) The Cabinet for Health and Family Services shall:

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

(b) Provide rehabilitation services for ***individuals with an intellectual disability*** ~~[mentally retarded persons]~~ through educational and training programs;

(c) Provide medical and allied services to ***individuals with an intellectual disability*** ~~[mentally retarded persons]~~ and their families;

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

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

(f) Assist other governmental and private agencies in the development of programs and services for ***individuals with an intellectual disability*** ~~[mentally retarded persons]~~ and their families and for the

prevention of ***intellectual disability***~~[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 state-operated facility that provides residential services to persons with ***an intellectual disability***~~[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 ***an intellectual disability***~~[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 state-operated facility or group home that provides residential services to persons with ***an intellectual disability***~~[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 and Family 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 and Family Services may close any state-owned or state-operated facility that provides residential services to persons with ***an intellectual disability***~~[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 and Family 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 16. KRS 210.047 is amended to read as follows:

A court hearing as provided under KRS 210.045(6) 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 ***an intellectual disability***~~[mental retardation]~~ and other developmental disabilities and their families;

(3) The rights of individuals with ***an intellectual disability***~~[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 17. KRS 210.055 is amended to read as follows:

The Cabinet for Health and Family Services may:

(1) Promulgate reasonable rules and regulations for the purposes of carrying out the provisions of KRS 210.045, including regulations establishing the minimum and maximum ages within which ***individuals with an intellectual disability***~~[mentally retarded persons]~~ are eligible:

(a) To participate in programs operated by the cabinet;

(b) To become patients in institutions operated by the cabinet;

(2) Participate in the education and training of professional and other persons in the field of mental retardation, and may encourage and assist private and public agencies and institutions to participate in similar education and training;

(3) Do all other things reasonably necessary to carry out the provisions of KRS 210.045.

➔Section 18. KRS 210.270 is amended to read as follows:

(1) The secretary of the Cabinet for Health and Family Services is authorized to designate those private homes, private nursing homes, and private institutions that he deems, after a thorough investigation of the personal and financial qualifications of the owners and tenants, the facilities and management, and the desirability of the location of the homes, suitable for the placement of patients, including individuals with mental illness or ***an intellectual disability***~~[mental retardation]~~ of all ages, outside of the state mental hospitals. The secretary of the Cabinet for Health and Family Services may promulgate, by administrative regulation, standards for the selection and operation of private homes, private nursing homes, and private institutions designated for the placement of patients. No home of an officer or employee of the Cabinet for Health and Family Services or of a member of his immediate family shall be designated for the placement of patients.

(2) Whenever the staff of a state mental hospital has determined that a patient who is not being held on an order arising out of a criminal offense has sufficiently improved and is not dangerous to himself or other persons, and that it would be in the patient's best interest to be placed outside of the hospital in a private home or private nursing home, the hospital shall so certify and authorize the patient to be transferred to a designated private home or private nursing home for care and custody for a length of time that the hospital deems advisable.

(3) No patient with ***an intellectual disability***~~[mental retardation]~~ lodged in a state institution may have his level of care reclassified nor may he be transferred to a private nursing home or other private institution without first providing ten (10) days' notice by certified mail, return receipt requested, to the patient's parents or guardian that a reclassification of the patient's level of care or a transfer in the place of residence is being considered.

(4) Any parent or guardian of any patient with ***an intellectual disability***~~[mental retardation]~~ lodged in a state institution may participate in any evaluation procedure which may result in a reclassification of the patient's level of care or in a transfer in the place of residence of the patient. Participation may include the submission by the parents or guardian of medical evidence or any other evidence deemed relevant by the parents or guardian to the possible reclassification or transfer of the patient.

(5) If the decision to reclassify or transfer any patient with ***an intellectual disability***~~[mental retardation]~~ is adverse to the best interests of the patient as expressed by the parents or guardian, they shall be given notice by

certified mail, return receipt requested, that they are entitled to a thirty (30) day period from the receipt of such notice to file with the secretary of the Cabinet for Health and Family Services a notice of appeal and application for a hearing. Upon receipt of an application for a hearing, a hearing shall be conducted in accordance with KRS Chapter 13B.

(6) The appeal shall be heard by a three (3) member panel composed of a designated representative of the Cabinet for Health and Family Services, a designated representative of the state institution where the patient with ***an intellectual disability*** ~~[mental retardation]~~ is presently lodged, and a designated neutral representative appointed by the county judge/executive wherein the institution in question is located. The secretary may appoint a hearing officer to preside over the conduct of the hearing.

(7) Decisions made by the panel may be appealed to the Circuit Court of the county in which the state institution in question is located, to the Circuit Court of the county in which either of the parents or guardians or committee of the patient in question is domiciled at the time of the decision, or to Franklin Circuit Court in accordance with KRS Chapter 13B.

(8) All parents or guardians or committee of a patient with ***an intellectual disability*** ~~[mental retardation]~~ lodged in a state institution shall be fully apprised by the Cabinet for Health and Family Services of their rights and duties under the provisions of subsections (3), (4), (5), (6), and (7) of this section.

(9) The provisions of KRS 210.700 to 210.760 shall apply to patients transferred to designated private homes and private nursing homes as though the patients were residing in a state mental hospital.

➔Section 19. KRS 210.271 is amended to read as follows:

(1) No patient in an institution for the mentally ill or the ***intellectually disabled*** ~~[mentally retarded]~~ operated by the Cabinet for Health and Family Services shall be discharged to a boarding home as defined in KRS 216B.300 unless the boarding home is registered pursuant to KRS 216B.305.

(2) The cabinet shall conduct a quarterly follow-up visit, using cabinet personnel or through contract with the Regional Community Mental Health Centers, of all patients of state mental health or mental retardation facilities that are discharged to boarding homes. Any resident found to have needs that cannot be met by the boarding home shall be referred to the Department for Community Based Services for appropriate placement. Any boarding home suspected of operating as an unlicensed personal care facility or housing residents with needs that cannot be met by the boarding home shall be reported to the Division of Community Health Services for investigation.

➔Section 20. KRS 210.410 is amended to read as follows:

(1) The secretary of the Cabinet for Health and Family Services is hereby authorized to make state grants and other fund allocations from the Cabinet for Health and Family Services to assist any combination of cities and counties, or nonprofit corporations in the establishment and operation of regional community mental health and ***intellectual disability*** ~~[mental retardation]~~ programs which shall provide at least the following services:

(a) Inpatient services;

(b) Outpatient services;

(c) Partial hospitalization or psychosocial rehabilitation services;

(d) Emergency services;

(e) Consultation and education services; and

(f) ***Services for individuals with an intellectual disability*** ~~[Mental retardation services]~~.

(2) The services required in subsection (1)(a), (b), (c), (d), and (e) of this section shall be available to the mentally ill, drug abusers and alcohol abusers, and all age groups including children and the elderly. The services required in subsection (1)(a), (b), (c), (d), (e), and (f) shall be available to ***individuals with an intellectual disability*** ~~[the mentally retarded]~~. The services required in subsection (1)(b) of this section shall be available to any child age sixteen (16) or older upon request of such child without the consent of a parent or legal guardian, if the matter for which the services are sought involves alleged physical or sexual abuse by a parent or guardian whose consent would otherwise be required.

➔Section 21. KRS 210.570 is amended to read as follows:

The General Assembly of the Commonwealth of Kentucky hereby finds and declares that:

(1) Assistance and support to citizens of the Commonwealth with ***an intellectual disability*** ~~[mental retardation]~~ and other developmental disabilities are necessary and appropriate roles of state government;

(2) The current system of services and supports to persons with ***an intellectual disability*** ~~[mental retardation]~~ and other developmental disabilities suffers from a lack of program coordination, funding, controls on quality of care, and review and evaluation;

(3) As part of the review and evaluation, it is necessary to require:

(a) Identification, development, and provision of services and supports for persons with ***an intellectual disability*** ~~[mental retardation]~~ and other developmental disabilities using available institutional care as appropriate and integrated with community-based services designed to be inclusive, responsive to individual needs, and protective of the individual's legal rights to equal opportunity;

(b) Review of current funding mechanisms to determine the best method to establish an array of community-based comprehensive services using facility-based outpatient services and supports that are available through public and private sectors, including nonprofit and for-profit service providers, that will allow persons with ***an intellectual disability*** ~~[mental retardation]~~ and other developmental disabilities the opportunity to participate in community life. The review shall include consideration of the availability of residential alternatives, employment opportunities, and opportunities for participation in community-based social and recreational activities; and

(c) Development of funding strategies to promote appropriate use of community-based services and supports that provide:

1. Flexibility for persons with ***an intellectual disability*** ~~[mental retardation]~~ and other developmental disabilities;

2. Distribution of available funds among all interested service providers, including nonprofit and for-profit service providers, based on the needs of the person with mental retardation and other developmental disabilities; and

3. Efficiency and accountability to the general public;

(4) KRS 210.570 to 210.577 shall be construed to protect and to promote the continuing development and maintenance of the physical, mental, and social skills of persons with mental retardation and other developmental disabilities; and

(5) KRS 210.570 to 210.577 shall not be construed:

(a) To alter any requirements or responsibilities that are mandated by any state or federal law;

(b) To relieve any organizational unit or administrative body of its duties under state or federal law; or

(c) To transfer among state organizations or administrative bodies any responsibilities, powers, or duties that are mandated by state or federal law.

➔Section 22. KRS 210.575 is amended to read as follows:

(1) There is created the Kentucky Commission on Services and Supports for Individuals with ***Intellectual Disabilities*** ~~[Mental Retardation]~~ and Other Developmental Disabilities. The commission shall consist of:

(a) The secretary of the Cabinet for Health and Family Services;

(b) The commissioner of the Department for Mental Health and Mental Retardation Services;

(c) The commissioner of the Department for Medicaid Services;

(d) The executive director of the Office of Vocational Rehabilitation;

(e) The director of the University Affiliated Program at the Interdisciplinary Human Development Institute of the University of Kentucky;

(f) The director of the Kentucky Council on Developmental Disabilities;

(g) Two (2) members of the House of Representatives, appointed by the Speaker of the House;

(h) Two (2) members of the Senate, appointed by the Senate President; and

(i) Public members, appointed by the Governor as follows:

1. Five (5) family members, at least one (1) of whom shall be a member of a family with a child with ***an intellectual disability***~~[mental retardation]~~ or other developmental disabilities, and one (1) of whom shall be a member of a family with an adult with ***an intellectual disability***~~[mental retardation]~~ or other developmental disabilities. Of these five (5) family members, at least two (2) shall be members of a family with an individual with ***an intellectual disability***~~[mental retardation]~~ or other developmental disabilities residing in the home of the family member or in a community-based setting, and at least two (2) shall be members of a family with an individual with ***an intellectual disability***~~[mental retardation]~~ or other mental disabilities residing in an institutional residential facility that provides service to individuals with ***an intellectual disability***~~[mental retardation]~~ or other developmental disabilities;

2. Three (3) persons with ***an intellectual disability***~~[mental retardation]~~ or other developmental disabilities;

3. Two (2) business leaders;

4. Three (3) direct service providers representing the Kentucky Association of Regional Programs and the Kentucky Association of Residential Resources; and

5. One (1) representative of a statewide advocacy group.

The six (6) appointments made under subparagraphs 1. and 2. of this paragraph shall be chosen to reflect representation from each of Kentucky's six (6) congressional districts.

(2) The secretary of the Cabinet for Health and Family Services shall serve as chair of the commission.

(3) Members defined in subsection (1)(a) to (h) of this section shall serve during their terms of office. All public members appointed by the Governor shall serve a four (4) year term and may be reappointed for one (1) additional four (4) year term.

(4) All public members of the commission shall receive twenty-five dollars ($25) per day for attending each meeting. All commission members shall be reimbursed for necessary travel and other expenses actually incurred in the discharge of duties of the commission.

➔Section 23. KRS 210.577 is amended to read as follows:

(1) The commission created in KRS 210.575 shall meet at least quarterly or upon the call of the chair, the request of four (4) or more members, or the request of the Governor.

(2) The commission shall serve in an advisory capacity to accomplish the following:

(a) Advise the Governor and the General Assembly concerning the needs of persons with ***an intellectual disability***~~[mental retardation]~~ and other developmental disabilities;

(b) Develop a statewide strategy to increase access to community-based services and supports for persons with ***an intellectual disability***~~[mental retardation]~~ and other developmental disabilities. The strategy shall include:

1. Identification of funding needs and related fiscal impact; and

2. Criteria that establish priority for services that consider timeliness and service needs;

(c) Assess the need and potential utilization of specialized outpatient clinics for medical, dental, and special therapeutic services for persons with ***an intellectual disability***~~[mental retardation]~~ and other developmental disabilities;

(d) Evaluate the effectiveness of state agencies and public and private service providers, including nonprofit and for-profit service providers, in:

1. Dissemination of information and education;

2. Providing outcome-oriented services; and

3. Efficiently utilizing available resources, including blended funding streams;

(e) Develop a recommended comprehensive ten (10) year plan for placement of qualified persons in the most integrated setting appropriate to their needs;

(f) Recommend an effective quality assurance and consumer satisfaction monitoring program that includes recommendations as to the appropriate role of family members, persons with ***an intellectual disability*** ~~[mental retardation]~~ and other developmental disabilities, and advocates in quality assurance efforts;

(g) Develop recommendations for the implementation of a self-determination model of funding services and supports as established under KRS 205.6317(1) for persons who are receiving services or supports under the Supports for Community Living Program as of June 24, 2003. The model shall include, but is not limited to, the following:

1. The ability to establish an individual rate or budget for each person;

2. Mechanisms to ensure that each participant has the support and assistance necessary to design and implement a package of services and supports unique to the individual;

3. The ability to arrange services, supports, and resources unique to each person based upon the preferences of the recipient; and

4. The design of a system of accountability for the use of public funds.

The chairperson of the commission shall appoint an ad-hoc committee composed of commission members and other interested parties to develop the recommendations required by this paragraph; and

(h) Advise the Governor and the General Assembly on whether the recommendations should be implemented by administrative regulations or proposed legislation.

(3) The commission shall review the plan annually and shall submit annual updates no later than October 1 to the Governor and the Legislative Research Commission.

➔Section 24. KRS 210.580 is amended to read as follows:

(1) The Kentucky Commission on Services and Supports for Individuals with ***an Intellectual Disability*** ~~[Mental Retardation]~~ and Other Developmental Disorders established in KRS 210.575, and the Kentucky Commission on Services and Supports to Individuals with Mental Illness, Alcohol and Other Drug Disorders, and Dual Diagnoses established in KRS 210.502 shall, by August 1, 2004, establish a joint ad hoc committee on transitioning from children's services systems to adult services systems for children who will continue to need services or supports after reaching age twenty-one (21).

(2) The co-chairpersons of each commission shall each designate a joint ad hoc committee chairperson and appoint up to ten (10) members for the joint ad hoc committee. At least seventy-five percent (75%) of the membership shall be composed of family members of consumers of adult or child services, advocates, and nonprofit and community-based providers of adult and child services and supports. Members of the commissions may serve as a chairperson and may be appointed to the ad hoc committee.

(3) The joint ad hoc committee shall develop recommendations for implementation of specific plans of action to meet the needs of children who transition to adult services systems.

(4) The joint ad hoc committee shall make a preliminary report by October 30, 2004, and shall make a final report by December 30, 2004, to both commissions and to the Interim Joint Committee on Health and Welfare.

➔Section 25. KRS 216.510 is amended to read as follows:

As used in KRS 216.515 to 216.530:

(1) "Long-term-care facilities" means those health-care facilities in the Commonwealth which are defined by the Cabinet for Health and Family Services to be family-care homes, personal-care homes, intermediate-care facilities, skilled-nursing facilities, nursing facilities as defined in Pub. L. 100-203, nursing homes, and intermediate-care facilities for the ***intellectually*** ~~[mentally retarded]~~ and developmentally disabled.

(2) "Resident" means any person who is admitted to a long-term-care facility as defined in KRS 216.515 to 216.530 for the purpose of receiving personal care and assistance.

(3) "Cabinet" means the Cabinet for Health and Family Services.

➔Section 26. KRS 216.535 is amended to read as follows:

As used in KRS 216.537 to 216.590:

(1) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the Cabinet for Health and Family Services to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Pub. L. 100-203, nursing homes, and intermediate care facilities for the ***intellectually*** ~~[mentally retarded]~~ and developmentally disabled.

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Resident" means any person admitted to a long-term care facility as defined by this section.

(4) "Licensee" in the case of a licensee who is an individual means the individual, and in the case of a licensee who is a corporation, partnership, or association means the corporation, partnership, or association.

(5) "Secretary" means the secretary of the Cabinet for Health and Family Services.

(6) "Long-term care ombudsman" means the person responsible for the operation of a long-term care ombudsman program which investigates and resolves complaints made by or on behalf of residents of long-term care facilities.

(7) "Willful interference" means an intentional, knowing, or purposeful act or omission which hinders or impedes the lawful performance of the duties and responsibilities of the ombudsman as set forth in this chapter.

(8) The following information shall be available upon request of the affected Medicaid recipient or responsible party:

(a) Business names, business addresses, and business telephone numbers of operators and administrators of the facility; and

(b) Business names, business addresses, and business telephone numbers of staff physicians and the directors of nursing.

(9) The following information shall be provided to the nursing facility patient upon admission:

(a) Admission and discharge policies of the facility;

(b) Payment policies relevant to patients for all payor types; and

(c) Information developed and distributed to the nursing facility by the Department for Medicaid Services, including, but not limited to:

1. Procedures for implementation of all peer review organizations' reviews and appeals processes;

2. Eligibility criteria for the state's Medical Assistance Program, including circumstances when eligibility may be denied; and

3. Names and telephone numbers for case managers and all state long term care ombudsmen.

➔Section 27. KRS 304.17-310 is amended to read as follows:

(1) Family expense health insurance is that provided under a policy issued to one (1) of the family members insured, who shall be deemed the policyholder, covering any two (2) or more eligible members of a family, including husband, wife, unmarried dependent children, to age nineteen (19), unmarried children from nineteen (19) to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the policyholder for maintenance and support, and any other person dependent upon the policyholder. Any authorized health insurer may issue the insurance.

(2) An individual hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state more than 120 days after June 13, 1968, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to be both (a) incapable of self-sustaining employment by reason of ***an intellectual*** ~~[mental retardation]~~ or physical disability and (b) chiefly dependent upon the policyholder or subscriber for support and maintenance, provided proof of the incapacity and dependency is furnished to the insurer or corporation by the policyholder or subscriber within thirty-one (31) days of the child's attainment of the limiting age and subsequently as may be required by the insurer or

corporation but not more frequently than annually after the two (2) year period following the child's attainment of the limiting age.

(3) Insurers offering family expense health insurance shall offer the applicant the option to purchase coverage for unmarried dependent children until age twenty-five (25).

➔Section 28. KRS 387.540 is amended to read as follows:

(1) Prior to a hearing on a petition for a determination of partial disability or disability and the appointment of a limited guardian, guardian, limited conservator, or conservator, an interdisciplinary evaluation report shall be filed with the court. The report may be filed as a single and joint report of the interdisciplinary evaluation team, or it may otherwise be constituted by the separate reports filed by each individual of the team. If the court and all parties to the proceeding and their attorneys agree to the admissibility of the report or reports, the report or reports shall be admitted into evidence and shall be considered by the jury. The report shall be compiled by at least three (3) individuals, including a physician, a psychologist licensed or certified under the provisions of KRS Chapter 319, and a person licensed or certified as a social worker or an employee of the Cabinet for Health and Family Services who meets the qualifications of KRS 335.080(1)(a), (b), and (c) or 335.090(1)(a), (b), and (c). The social worker shall, when possible, be chosen from among employees of the Cabinet for Health and Family Services residing or working in the area, and there shall be no additional compensation for their service on the interdisciplinary evaluation team.

(2) At least one (1) person participating in the compilation of the report shall have knowledge of the particular disability which the respondent is alleged to have or knowledge of the skills required of the respondent to care for himself and his estate.

(3) If the respondent is alleged to be partially disabled or disabled due to mental illness, at least one (1) person participating in the compilation of the interdisciplinary evaluation report shall be a qualified mental health professional as defined in KRS 202A.011(12). If the respondent is alleged to be partially disabled or disabled due to ***an intellectual disability*** ~~[mental retardation]~~, at least one (1) person participating in the compilation of the evaluation report shall be a qualified mental retardation professional as defined in KRS 202B.010(12).

(4) The interdisciplinary evaluation report shall contain:

(a) A description of the nature and extent of the respondent's disabilities, if any;

(b) Current evaluations of the respondent's social, intellectual, physical, and educational condition, adaptive behavior, and social skills. Such evaluations may be based on prior evaluations not more than three (3) months old, except that evaluations of the respondent's intellectual condition may be based on individual intelligence test scores not more than one (1) year old;

(c) An opinion as to whether guardianship or conservatorship is needed, the type of guardianship or conservatorship needed, if any, and the reasons therefor;

(d) An opinion as to the length of time guardianship or conservatorship will be needed by the respondent, if at all, and the reasons therefor;

(e) If limited guardianship or conservatorship is recommended, a further recommendation as to the scope of the guardianship or conservatorship, specifying particularly the rights to be limited and the corresponding powers and duties of the limited guardian or limited conservator;

(f) A description of the social, educational, medical, and rehabilitative services currently being utilized by the respondent, if any;

(g) A determination whether alternatives to guardianship or conservatorship are available;

(h) A recommendation as to the most appropriate treatment or rehabilitation plan and living arrangement for the respondent and the reasons therefor;

(i) A listing of all medications the respondent is receiving, the dosage, and a description of the impact of the medication upon the respondent's mental and physical condition and behavior;

(j) An opinion whether attending a hearing on a petition filed under KRS 387.530 would subject the respondent to serious risk of harm;

(k) The names and addresses of all individuals who examined or interviewed the respondent or otherwise participated in the evaluation; and

(l) Any dissenting opinions or other comments by the evaluators.

(5) The evaluation report may be compiled by a community mental health-mental retardation center, a licensed facility for mentally ill or developmentally disabled persons, if the respondent is a resident of such facility, or a similar agency.

(6) In all cases where the respondent is a resident of a licensed facility for mentally ill or developmentally disabled persons and the petition is filed by an employee of that facility, the petition shall be accompanied by an interdisciplinary evaluation report prepared by the facility.

(7) Except as provided in subsection (6) of this section, the court shall order appropriate evaluations to be performed by qualified persons or a qualified agency. The report shall be prepared and filed with the court and copies mailed to the attorneys for both parties at least ten (10) days prior to the hearing. All items specified in subsection (4) of this section shall be included in the report.

(8) If the person evaluated is a poor person as defined in KRS 453.190, the examiners shall be paid by the county in which the petition is filed upon an order of allowance entered by the court. Payment shall be in an amount which is reasonable as determined by the court, except no payment shall be required of the county for an evaluation performed by a salaried employee of a state agency for an evaluation performed within the course of his employment. Additionally, no payment shall be required of the county for an evaluation performed by a salaried employee of a community mental health-mental retardation center or private facility or agency where the costs incurred by the center, facility, or agency are reimbursable through third-party payors. Affidavits or other competent evidence shall be admissible to prove the services rendered but not to prove their value.

(9) The respondent may file a response to the evaluation report no later than five (5) days prior to the hearing.

(10) The respondent may secure an independent evaluation. If the respondent is unable to pay for the evaluation, compensation for the independent evaluation may be paid by the county in an amount which is reasonable as determined by the court.

Signed by Governor April 13, 2010.