CHAPTER 4-A. THE DEVELOPMENTAL DISABILITY LAW
PART I. GENERAL PROVISIONS

§451.1. Title; purpose; intent

A. This Chapter shall be cited as the "Developmental Disability Law".

B. It is the purpose of this Chapter to provide for a developmental disabilities services system that values all persons with developmental disabilities and affirms and protects their fundamental rights and privileges as citizens of Louisiana and the United States of America. This system shall be based on the premise established in the Developmental Disabilities Assistance and Bill of Rights Act, that disability is a natural part of the human experience that does not diminish the right of persons with developmental disabilities to exert control and choice over their own lives, and fully participate in and contribute to their communities through full integration and inclusion in the economic, political, social, cultural and educational mainstream of society.

C. It is the intent of this Chapter to delineate the principles of the system, the rights of persons with developmental disabilities, the definitions used in this Chapter, the system process, the roles and responsibilities within the system, and other issues that will guide the provision of supports and services for persons with developmental disabilities.

D. It is the intent of this Chapter to establish that the office for citizens with developmental disabilities within the Department of Health and Hospitals will be responsible for the programmatic leadership in the designing and developing of all developmental disabilities services provided by the department either directly or pursuant to agreements with public and private providers. It is also the intent of this Chapter to enable the office to provide developmental disabilities services and supports consistent with the rights and principles within this Chapter, to the extent possible.

E. It is the intent of this Chapter to establish a system that affirms and supports the principles of self-determination and full inclusion of all persons with developmental disabilities to live, work, and participate in leisure activities in their community as they choose and to the extent possible.

F. This law shall be made available in alternative formats upon request from the following:

(1) Office for citizens with developmental disabilities.

(2) Human services authorities and districts.

(3) Governor's Office of Disability Affairs.

(4) Developmental Disabilities Council.

(5) The Advocacy Center.

(6) Human Development Center.

G. The provisions of this Chapter shall not be construed to delete, change, affect, or decrease the requirements of R.S. 17:1941 through 1959 regarding Special School District No. 1 or the Louisiana Department of Education, or both.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§451.2. Definitions

As used in this Chapter, the following words, terms, and phrases shall have the meaning ascribed to them in this Section, except when the context clearly indicates a different meaning:

(1) "Office" or "OCDD" means the office for citizens with developmental disabilities within the Department of Health and Hospitals.

(2) "Administrative units" means developmental centers, regional offices and any other unit established under the administration and supervision of the office.

(3) "Appropriate" means all of the following:

(a) In accordance with standards of the Department of Health and Hospitals and the provisions of this Chapter.

(b) In the most integrated setting that adequately addresses the diverse support needs of the person.

(c) In accordance with the person's support plan.

(4) "Assistant secretary" means the assistant secretary of the office for citizens with developmental disabilities of the Department of Health and Hospitals.

(5) "Community home" means a living option, certified, licensed, or monitored by the Department of Health and Hospitals, where six or fewer people with developmental disabilities reside.

(6) "Dangerous to others" means the condition of a person whose behavior or significant threats support a reasonable expectation that there is a substantial risk that he will inflict physical harm upon another person in the near future.

(7) "Dangerous to self" means the condition of a person whose behavior, significant threats, or inaction supports a reasonable expectation that there is a substantial risk that he will inflict significant physical or severe emotional harm upon his own person; or the inability of a person, independently or with the help of willing and responsible family members or friends, to meet his own basic physical needs; or his inability to protect himself from serious harm due to his inability to discern the dangers and hazards found in everyday life.

(8) "Department" means the Department of Health and Hospitals.

(9) "Determination" means determination of eligibility for entry into the system.

(10) "Developmental center" means an administrative unit of the office under its administration, supervision, and control through which the office provides and develops developmental disabilities services and system capacity building efforts. Developmental centers are responsible for:

(a) Planning and providing living options and other developmental disabilities services as determined by the office.

(b) Stimulating and supporting capacity building within the system through resource centers, technical assistance, training, and other means as determined by the office.

(11) "Developmental disabilities services" means programs, services, and supports for persons with developmental disabilities that include but are not limited to information and referral services, support coordination services, system entry services, development of the support profiles and plans, individual and family support services, living options, habilitation services, and vocational services.

(12) "Developmental disability" means either:

(a) A severe, chronic disability of a person that:

(i) Is attributable to an intellectual or physical impairment or combination of intellectual and physical impairments.

(ii) Is manifested before the person reaches age twenty-two.

(iii) Is likely to continue indefinitely.

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(aa) Self-care.

(bb) Receptive and expressive language.

(cc) Learning.

(dd) Mobility.

(ee) Self-direction.

(ff) Capacity for independent living.

(gg) Economic self-sufficiency.

(v) Is not attributed solely to mental illness.

(vi) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(b) A substantial developmental delay or specific congenital or acquired condition in a person from birth through age nine which, without services and support, has a high probability of resulting in those criteria in Subparagraph (a) of this Paragraph later in life that may be considered to be a developmental disability.

(13) "Facility administrator" means the official appointed as the head of a state or privately operated residential facility and includes anyone designated by the facility administrator to act on behalf of the facility administrator.

(14) "Group home" means a living option, certified, licensed, or monitored by the department, where seven to fifteen people with developmental disabilities reside.

(15) "Human services authority or district" means a regional or other locally-based agency established by state law with assigned powers, duties and functions regarding the delivery of mental health, developmental disabilities, and addictive disorders services funded by appropriations from the state and provided through memoranda of agreement with the program offices of the department. Human services authorities and districts are responsible for all of the following:

(a) Providing determination for entry into the system, development of the support profile, and support coordination.

(b) Providing individual and family support services, living options, and other developmental disabilities services directly or by contract or individual agreements as determined by the office.

(16) "Interdisciplinary review" means a review by a team of professionals for the purpose of determining the presence of a developmental disability as defined in this Chapter. Professionals conducting this review must have knowledge of diagnoses and functional limitations associated with developmental disabilities.

(17) "Interdisciplinary team" means a group that reviews information, data and input from a person to make recommendations relevant to the needs of the person. The team consists of the person, his legal representative if applicable, professionals of varied disciplines who have knowledge relevant to the person's needs, and may include his family members along with others the person has designated.

(18) "Living options" means a variety of service settings wherein people with developmental disabilities live, including but not limited to extended family living, supported living, community homes, group homes, and residential facilities.

(19) "Most integrated setting" is an environment that includes the full range of service and support options that reflect the desires and goals of the person and that address the needs of the person and which promotes the full participation in daily life and activities.

(20) "Person" means a person with a developmental disability. It is also understood that it includes the legal representative of the person in instances where one has been appointed to act on behalf of the person.

(21) "Plan coordinator" means the individual who is responsible for guiding the support team in development of the support plan for the person with a disability. The plan coordinator assures that the goals identified by the person are addressed in the support plan.

(22) "Provider" means a person, partnership, corporation, state agency, or other entity that provides developmental disabilities services and receives either state or federal funds or both.

(23) "Regional office" means an administrative unit of the office, subject to the administration, supervision, and control of the office and through which the office provides and develops developmental disabilities services. Regional offices are responsible for the following:

(a) Providing determination for entry into the system, development of the support profile, and support coordination.

(b) Providing individual and family support services, living options, and other developmental disabilities services directly or by contract or individual agreements as determined by the office.

(24) "Residential facilities" means living options that are certified and licensed by the department to provide residential services to sixteen or more persons.

(25) "Services" means developmental disability services.

(26) "Substantial functional limitations" means documented evidence of limitations in present functioning considered within the context of community environments typical of the age, peers, and culture of the person.

(27) "Support plan" means an individualized plan that coordinates supports and services to assist the person in reaching his desired outcomes and reflects the vision, personal preferences, life goals, and diverse formal and informal support needs of the person. The plan is developed by the person and his support team. Persons with developmental disabilities, family members and others chosen by the person or the family, and those legally empowered to make decisions for the person, are the primary decision makers regarding services and supports such persons receive, including the choice of available living options.

(28) "Support profile" means a summary of identified supports or services that addresses the expressed needs and desires of the person and that is used in the development of the support plan for that person. It is developed prior to the person receiving supports or services.

(29) "Support team" means a team consisting of a person with a developmental disability, his plan coordinator, and may include his family and others whom the person chooses to assist him in developing a support plan.

(30) "System" means the developmental disabilities services system.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§451.3. Administration of the provisions of this Chapter; regional advisory committees; state advisory committee; responsibilities of human services authorities and districts

A. The provisions of this Chapter shall be administered and coordinated by the office according to regulations promulgated by the office in accordance with the Administrative Procedure Act with input from state and regional advisory committees. These rules shall be applicable to all public and private providers of developmental disabilities services. The office, through regional offices and human services authorities and districts, shall serve as the single point of entry into the system.

B. The assistant secretary of the office for citizens with developmental disabilities shall be the administrative head of the office and shall be fully responsible for the administration of the office, its administrative units, and the establishment of all programmatic policies for services and supports for persons with developmental disabilities and their families delivered under the auspices of the department.

C. The human services authorities and districts authorized by state law shall be responsible for meeting the requirements assigned to the office by this Chapter for regional developmental disabilities services delivery, development, and implementation in the area of their geographic assignment.

D. The office shall establish regional advisory committees.

(1) These advisory committees shall perform the following:

(a) Provide public input into the regional planning process and comment on regulations proposed by the office.

(b) Receive timely information on the budget of the office, in addition to information on implementation of all services and quality assurance reports by the office and advise the regional offices and human services authorities and districts.

(c) Collaborate with the regional offices and human services authorities and districts to develop outreach plans for each region. Such outreach plans shall provide for public dissemination of information regarding developmental disabilities and the services available through the regional offices and human services authorities and districts.

(2) These advisory committees shall be composed of a minimum of twelve members who represent positions and philosophies held by various groups and advocates for persons with developmental disabilities and shall include, but not be limited to:

(a) Persons with developmental disabilities.

(b) Parents and family members representing a cross section of developmental disabilities services.

(c) Private providers.

(d) Representatives of advocacy organizations and community stakeholders representing a cross section of developmental disabilities services.

(e) Public providers and administrators of regional administrative units and human services authorities and districts may be appointed as ad hoc, non-voting members of regional advisory committees.

E. The regional authority, organized as either a regional office or a human services authority or district shall discharge the following duties:

(1) Appoint the committee members from names submitted by consumer, provider, and advocacy groups, with the approval of the assistant secretary, who shall ensure that committee composition is in compliance with the state law.

(2) Sixty percent of the membership shall be composed of persons with developmental disabilities and parents and family members representing a cross section of developmental disabilities services.

F.(1) The office shall establish a state advisory committee which shall be organized as follows:

(a) Provide public input to the office regarding proposed regulations and the development of

state planning and budget.

(b) The state advisory committee shall consist of at least two people from each region, authority, or district.

(c) Sixty percent of the membership shall be comprised of persons with developmental disabilities and parents and family members representing a cross section of developmental disabilities services.

(2) The state advisory committee shall include at a minimum, but not be limited to the following:

(a) Persons with developmental disabilities.

(b) Parents and family members representing persons who receive a cross section of developmental disabilities services.

(c) Private providers.

(d) A representative of the American Federation of State, County, and Municipal Employees Council #17.

(e) Representatives of advocacy organizations representing a cross section of developmental disabilities services.

(f) Public providers and administrators of regional administrative units and human services authorities and districts may be appointed as ad hoc, non-voting members of the state advisory committee.

(3) The assistant secretary shall appoint the committee members, with the approval of the secretary of the department, from names submitted by the regional advisory committees.

(4) The state advisory committee shall coordinate with all regional advisory committees and shall use data provided by the regional advisory committees in the deliberations of the committee.

G. The regulations promulgated by the office pursuant to this Section shall:

(1) Promote coordination among the office, human services authorities and districts, and state and regional advisory committees.

(2) Promote responsiveness by the office to input from persons who receive developmental disabilities services and family members and providers regarding the delivery of services.

H. The department shall promulgate rules and regulations for the assessment of charges in accordance with the ability to pay and in accordance with applicable state or federal law and the following:

(1) It is not the intent of this Chapter that developmental disabilities services be provided at no cost to persons who are financially able to pay for these costs, in whole or in part.

(2) The person shall pay, in whole or in part, the costs of the developmental disabilities supports and services for which the person may be liable under provisions of this Chapter.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§451.4. State developmental centers; office for citizens with developmental disabilities

A. The office shall administer, supervise, and be responsible for the operation of state developmental centers providing developmental disabilities services.

B. Pinecrest Supports and Services Center, Northeast Supports and Services Center, Columbia Community Residential and Employment Services, Northwest Supports and Services Center, Leesville Residential and Employment Services, Acadiana Region Supports and Services Center, North Lake Supports and Services Center, Greater New Orleans Supports and Services Center, Bayou Region Supports and Services Center, Acadiana Employment Services at Eunice, and Acadiana Employment Services at Opelousas are continued as administrative units of this office.

C. The facility administrator of each center shall have the authority to develop policies and procedures necessary for the proper and orderly operation of the facility. Such policies and procedures shall be consistent with principles of this Chapter, office policies, and all applicable federal and state laws and regulations.

Acts 2005, No. 128, §1, eff. June 22, 2005; Acts 2007, No. 325, §1, eff. July 9, 2007.

§451.5. Provision of additional living options and developmental disabilities services and supports

A. The office may provide developmental disabilities services directly pursuant to R.S. 28:451.3 or through written agreements with public or private providers meeting state and federal regulations. Such written agreements may be with any person, organization, agency, or corporation that complies with the requirements of this Chapter, including but not limited to licensure regulations promulgated pursuant to this Chapter, and such other applicable regulations promulgated by the department.

B. Developmental disabilities services shall be consistent with the principles in this Chapter in order to receive state or federal funds or both.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§451.6. Assignment of property rights

A. By receiving services from and living in a licensed, state-operated, twenty-four-hour residential facility provided by or through the office, the person shall be deemed to have made an assignment to the department of his right, title, and interest in any property he owns, including interest in any trust or succession, up to the cost of the services actually provided. The portion of property and all assets which, pursuant to federal regulations or statute, the person may retain and still maintain eligibility for coverage under Title XIX of the Social Security Act programs or successor programs shall be exempt from such assignment.

B. The department shall be subrogated to the rights of any such person with regard to such property to the full extent of the costs due for providing such services to the person. The department shall be required to initiate or intervene in any civil actions, either in the name of the department or in the name of the person, in order to collect such costs.

C. This Section shall be liberally construed in order to effectuate its purpose.

Acts 2005, No. 128, §1, eff. June 22, 2005.

PART II. RIGHTS OF PERSONS WHO HAVE DEVELOPMENTAL DISABILITIES AND PRINCIPLES FOR THE DEVELOPMENTAL DISABILITIES SERVICES SYSTEM

§452.1. Rights of persons who have developmental disabilities

A. The rights that are specifically enumerated in this Part are in addition to all other rights of persons with developmental disabilities protected under state and federal law and all rights enjoyed by all citizens of Louisiana. This listing of rights is neither exclusive of nor intended to infringe upon any civil rights that are guaranteed to all people. These rights are protected regardless of the place or residence of the person, type of service or support, ability to exercise these rights or choice to exercise these rights. It is the intent of this Chapter that these rights shall be applied in the provision of supports and services to persons with developmental disabilities.

B. The rights of persons with developmental disabilities, unless expressly or specifically restricted in accordance with federal or state laws, include the following rights:

(1) To receive timely a determination for entry into the system and, if the person is thought to have a developmental disability, to have an expeditious diagnosis and evaluation and arrangement of services and supports to the fullest extent possible.

(2) To have and to participate in the preparation of a support plan as defined in R.S. 28:451.2, to have the support plan reviewed annually, and to request review of the support plan, and modification if indicated, at reasonable intervals.

(3) To have access to his records.

(4) To receive developmental disabilities services and supports consistent with personal needs and choices in the most integrated setting appropriate, taking into account the resources available to the state and the needs of others with developmental disabilities.

(5) To receive supports and services that address the desires and goals of the person.

(6) To receive supports and services in a respectful and in the least intrusive manner.

(7) To communicate in private by telephone, uncensored mail, or otherwise, with people inside or outside the place of residence of the person.

(8) To receive visitors.

(9) To self-direction.

(10) To privacy of person and belongings.

(11) To practice the religion of his choice.

(12) To access his medical information and records, to communicate with medical personnel and to consent to medical treatment in accordance with this Chapter.

(13) To engage in leisure, recreational and other related activities.

(14) To receive reasonable accommodation in the proceedings and activities of the developmental disabilities services system, including the application for and provision of supports and services and communication about such supports and services.

(15) To withdraw from any developmental disabilities services or supports to which the person has been admitted voluntarily and not be detained longer than seventy-two hours excluding Saturdays, Sundays and holidays, after executing a written request of discharge, or unless a commitment proceeding is instituted by the department or others as set forth in this Chapter during the seventy-two-hour period.

(16) To be informed both orally and in writing of the rights of the person under the system, both during the determination process and at intervals specified in office policy, using language and a communication system that effectively communicates those rights to the person.

(17) To be informed of the procedures that will be used to decide the type and amount of developmental disabilities services and supports provided to the person and the location of the services and supports.

(18) To have access to legal assistance and to be visited by his attorney at all times, and to communicate privately with his attorney and with the committing court, if applicable.

(19) To refuse specific services and supports unless refusal would pose a danger to himself or to others.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§452.2. Principles for the developmental disabilities services system

The department through the office shall provide developmental disabilities services and supports consistent with the following principles, to the extent possible:

A. Supports assist in enabling people to exercise self-determination in their lives.

B. Supports assist in enabling people to achieve their maximum potential through increased independence, productivity, and inclusion in their communities.

C. Personal outcomes and goals are considered in the development of individualized supports for each person.

D. The community where the person chooses to live and work is the optimum place to provide supports and services.

E. Persons and families are generally best able to determine their needs, rather than their needs being determined by others.

F. The needs of the entire family are considered in the development of family supports.

G. Family supports enable children to live in stable family environments with enduring relationships with one or more adults regardless of the severity of the disability of the child or the degree of support necessary.

H. Children and young adults with disabilities receive and participate in an appropriate education which enables them to have increased opportunities for well being, development and inclusion in their communities.

I. Existing natural supports and community resources are promoted and utilized.

Acts 2005, No. 128, §1, eff. June 22, 2005.

PART III. OMBUDSMAN PROGRAM

§453.1. Definition; establishment of the ombudsman program

A. The term "ombudsman" shall refer to a person who is trained and certified as required by the Department of Justice.

B. The ombudsman program is established in the Department of Justice for the purpose of monitoring care received by persons with developmental disabilities residing in state-licensed facilities for persons with developmental disabilities funded through the department excluding state-operated residential care facilities.

C. The Department of Justice shall adopt rules and regulations, in accordance with the provisions of the Administrative Procedure Act, dealing with the following:

(1) The governance of the certification and training program for the establishment of the ombudsman program.

(2) The required training program shall include all of the following:

(a) Rights of persons with developmental disabilities.

(b) Complaint resolutions.

(c) Community resources.

(d) An understanding of developmental disabilities.

D. Certification shall be valid for one year. An ombudsman may be decertified for misconduct, incompetence, or material neglect of duty.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§453.2. Ombudsman functions and responsibilities

A. The ombudsman shall have the following functions and responsibilities:

(1) To receive, investigate, and resolve complaints made by or on behalf of persons who live in facilities described in this Chapter concerning any act, omission, practice, or procedure that may adversely affect the health, safety, or welfare of any such person.

(2) To visit such facilities on a regular basis, in order to become acquainted with the persons living there, their families, facility administration, and facility personnel.

(3) To serve as a liaison between persons living there, their families, facility administration, and facility personnel.

(4) To encourage persons living there in self advocacy when problems are expressed and to make recommendations to the facility, group home, or community home administration for the appropriate resolution of the problem.

(5) To promote awareness of the ombudsman program.

B. No person may serve as an ombudsman without appropriate training and certification.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§453.3. Access; liability

A. The ombudsman shall have immediate access to any person living in a licensed facility described in this Chapter in the reasonable conduct of the functions and responsibilities of the ombudsman, shall inform the administrator or person in charge upon entering the facility, group home, or community home, and shall perform the ombudsman functions and responsibilities in the manner that is least disruptive of care and activities.

B. In performing the functions and responsibilities of the ombudsman, the ombudsman may engage in the following actions:

(1) Communicate privately and confidentially with persons living at the facilities.

(2) Review or obtain any books, files, medical, social, or financial records, or other relevant records pertaining to a particular person, provided written consent is obtained from the person or the person's legal representative.

C. The ombudsman, and any agency that receives information from the ombudsman, shall maintain as confidential all matters relating to any inquiry or referral, including the identity of the person, unless the person or the person's legal representative consents in writing to the disclosure.

D. No ombudsman shall be liable under state law for the good faith performance of official duties as defined by state and federal laws and regulations.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§453.4. Prohibition of interference; penalties

A residential facility as described in this Chapter shall cooperate with an ombudsman in the performance of his official duties and shall not interfere with, nor retaliate against, a person who has filed a complaint with an ombudsman. Anyone who knowingly or willfully violates the provisions of this Section shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred nor more than five hundred dollars.

Acts 2005, No. 128, §1, eff. June 22, 2005.

PART IV. DEVELOPMENTAL DISABILITIES SERVICES SYSTEM

§454.1. Developmental disabilities services system

A. The office for citizens with developmental disabilities shall establish a developmental disabilities services and supports system and shall serve as the single point of entry into the system. The services and supports noted in the definition of developmental disabilities services in this Chapter are not intended to reflect all services that may be provided.

B. For the purposes of this Chapter, the system shall encompass those developmental disabilities services provided by the office, the human services authorities and districts, and private and public providers.

C. The office shall provide leadership in developing supports and services which promote self-determination by persons with developmental disabilities as primary decision makers in the choice and design of their services and providers, and in the control over the resources allocated to meet their personal outcomes and goals.

D. Person and family-centered planning principles shall be used in the design and development of the support plan and in the development of procedures and practices of the system.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.2. System process; entry; support profile; support plan; transfer and discharge; follow-up; record

A. Determination for entry into the system shall be made in accordance with the following:

(1) Referrals shall be received from a variety of sources for a determination for entry into the system.

(2) Standardized interviews and collection of information, including assessment of substantial functional limitations, necessary for determination for entry into the system and for the establishment of legal status shall be completed.

(3) A standardized determination for entry into the system, as established by a determination of the presence of a developmental disability as defined in this Chapter, shall be completed within forty-five days of receiving information necessary for making the determination.

(4) A needs-based assessment shall be completed for anyone who enters the developmental disabilities service system and he shall be informed of all service and support options for which he is criteria eligible. The individual providing the information shall not express a preference for a particular service option, but rather, within fifteen days of completion of the standardized determination, shall supply to the person a list of all options for which he is criteria eligible. Once a service option has been selected, the person shall be informed of all providers of that service. The individual providing the information shall not express a preference for a particular provider.

(5) The determination for persons receiving developmental disabilities services shall be reviewed at least every five years, unless the person has been given an approval by the office for entry into the system without periodic evaluations.

(6) A person who has been given a denial for entry into the system or a person who has withdrawn from the system may request a new determination at any time. No person shall be denied entrance into the system unless:

(a) The person has had the opportunity to have a face-to-face interview. If it is determined during the interview that the person does not have a diagnosis and evaluation, the office will provide for one.

(b) The person has been given notice of his right to submit information in support of a determination for entry into the system including an independent diagnosis and evaluation at his expense.

(c) There has been an interdisciplinary review of necessary information.

B.(1) The support profile and plan shall accomplish all of the following:

(a) Address the provision of individualized supports and services in the most integrated setting as determined by an individual assessment.

(b) Reflect the desires and goals of the person.

(c) Address the well-being, health, safety, and security unique to the individual.

(2) The support profile will be used in developing the support plan which will be implemented to the extent possible by the office and human services authorities and districts.

C. Transfer and discharge shall be made in accordance with the following:

(1) Consideration shall be given to all requests made to the office to transfer a person within or to discharge a person from the system.

(2) Such requests may be initiated by the person, the person's legal representative, or the provider of services for the person in accordance with existing federal and state regulations or existing court orders.

D. A follow-up contact shall occur for the period of time as specified in state or federal regulations when the person chooses to leave the system.

E. Each person shall have a confidential record established and maintained by the provider in accordance with state and federal laws and regulations.

F. Implementation of the support plan shall include consideration of service settings that address

the person's chronological age, abilities, functional levels and safety needs along with desired personal outcomes and goals. Inclusive and safe interactions with persons in the environment shall be additional factors in the selection of the setting.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.3. Consent; capacity to consent

A. A person with a developmental disability is presumed to have capacity to give consent to a particular decision, unless and until determined otherwise. The provisions of this Section shall apply only to persons with cognitive disabilities.

(1) Capacity to give consent or make a particular decision exists when a person is able to comprehend the purposes, consequences, risks and benefits of the decision and any available alternatives.

(2) Decisions regarding daily activities and matters that are not of long-term consequence may require less comprehension than decisions concerning matters that have important legal, health, safety or other long-term consequences, including medical treatment decisions, behavioral or psychiatric treatment decisions, financial matters, contractual matters, living arrangements and rights restrictions.

(3) A decision may be expressed either orally, in writing, or by any other form of communication.

B. The capacity of a person to consent can change and develop over time, depending upon health, environment, and other variables.

(1) The capacity of a person to consent must be routinely assessed as decisions present themselves.

(2) Assessment shall use current standards and assessment tools, along with input from others, including family and direct service staff who are most familiar with the person.

(3) Lack of capacity to make a particular decision does not negate the possibility that a person may have capacity to make other decisions or later decisions.

C. Decisions concerning matters that have important legal, health, safety or other long-term consequences shall require legally adequate consent. Before a person with a developmental disability can be deemed to have given legally adequate consent, each of the following conditions must be met:

(1) The person has not been placed under a judgment of interdiction or continuing tutorship that restricts the right of the person to make the decision in question.

(2) The person has capacity to consent and has been informed of the purposes, consequences, and risks of the decision being made and the benefits of any alternative decision.

(3) The person understands that his withholding or withdrawing of consent shall not prejudice future provision of care and services to him.

(4) The person is giving such consent voluntarily and free from coercion and undue influence.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.4. Voluntary admission and discharge

A. The department is encouraged to admit persons with developmental disabilities to developmental disabilities services on a voluntary basis. Neither the department nor any employee or agent of a provider of developmental disabilities services shall prohibit a person with a developmental disability from applying for conversion of an involuntary commitment to a voluntary admission.

B. A person voluntarily admitted into a residential facility who makes a written request for discharge shall be released within seventy-two hours from the time of the written request excluding weekends and holidays unless a petition alleging that the person is either dangerous to himself or dangerous to others is filed with the district court of the parish where the person is located. Upon a showing of probable cause that the person meets this standard, the court may order his confinement until the commitment hearing.

C. Persons who are able to be discharged from developmental disabilities services and who were admitted on a voluntary basis shall be discharged in accordance with the procedures established by the office by rules promulgated in accordance with the Administrative Procedure Act, consistent with the requirements of this Chapter. The office shall include in the rules, procedures for processing requests for discharge of persons who are voluntarily admitted as well as for addressing oppositions to discharge.

D. Upon determination that any person receiving services from the office is either dangerous to himself or dangerous to others, the office will take steps, including involuntary commitment when appropriate, to protect the person or prevent him from harming others.

E. The office shall have the authority to discharge a person who was voluntarily admitted and who for a reasonable period of time has not received developmental disabilities services.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.5. Involuntary admission; determination of probable cause

A. Any interested person, including a representative of the department, may file a petition seeking to have a person with a developmental disability remanded to the custody of the department on the grounds that he is either dangerous to himself or dangerous to others.

B. The petition shall be filed in the judicial district in which the respondent resides or may be found. The petition shall contain the facts which are the basis of the assertion that the respondent is a person who has been diagnosed with a developmental disability and is either dangerous to himself or dangerous to others.

C. The petition shall attach the written report and recommendations prepared by an interdisciplinary team, if available, and any other available medical, educational or psychological records.

D. Upon the filing of the petition, the court shall:

(1) Assign a time for a hearing, not later than twenty calendar days after the filing of the petition, excluding weekends and legal holidays.

(2) Shall assign a place for a hearing upon the petition.

(3) Shall cause notice thereof to be personally served at least ten days prior to the hearing on the respondent and the attorney for the respondent. The notice shall satisfy the following requirements:

(a) The notice shall inform the respondent that he has a right to be present at the hearing.

(b) The notice shall inform the respondent that he has a right to counsel.

(c) The notice shall inform the respondent that he, if indigent or otherwise qualified, has the right to have counsel appointed to represent him.

(d) The notice shall inform the respondent that he has the right to present evidence and cross examine witnesses at any hearing on such application.

E. The petition shall be served on the department at least ten days prior to the hearing.

F. Determination of probable cause.

(1) As soon as practical after the filing of the petition, the court shall review the petition and supporting documents and determine whether there exists probable cause to believe that the respondent has a developmental disability and is either dangerous to himself or dangerous to others.

(2) If the court determines that there is probable cause to believe that the respondent meets the above criteria for involuntary commitment, the court may notify the department if the person is not currently in a confined setting. The department may refer appropriate cases to the office for available and temporary supports and services that meet the safety needs of the person or others.

(3) Before committing any person to the department, the court shall order a diagnosis and evaluation by the department and shall use this interdisciplinary evaluation as an expert recommendation. The written report on the diagnosis and evaluation of the person shall be made available to counsel for the respondent at least three days before the hearing.

(4) The respondent or his attorney shall have the right to seek additional independent expert opinion when necessary in their discretion.

G. The respondent shall have the right to privately retained and paid counsel at any time and all respondents must be represented by counsel as early as possible in every proceeding. If the respondent has no attorney, the court shall appoint an attorney to represent him. His attorney shall be granted access to all the records belonging to the person.

H. Entry into the developmental disabilities services system must be established by the department prior to any person being judicially committed to the department under this Chapter.

(1) Entry is established by a determination of the presence of a developmental disability as defined in this Chapter, through review of the court ordered diagnosis and evaluation, administration of a standardized interview and collection of information, including assessment of substantial functional limitations necessary for determination for entry into the system and for the establishment of legal

status.

(2) No person shall be denied entrance into the system unless:

(a) The person has had the opportunity to have a face-to-face interview.

(b) The person has been given notice of his right to submit information in support of a determination for entry into the system including an independent diagnosis and evaluation at his expense.

(c) There has been an interdisciplinary review of necessary information.

(3) A written report on the determination for entry shall be made available to counsel for the respondent at least three days before the hearing.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.6. Judicial hearings; commitments

A. The court shall conduct the hearing in as formal a manner as is possible under the circumstances and shall adhere to the following:

(1) Admitting evidence according to the usual rules of evidence.

(2) Admitting first such witnesses and evidence that tend to show that the person who is the subject of the petition is a proper subject for involuntary commitment.

(3) The respondent has a right to be present unless the court finds that he knowingly, voluntarily, and intelligently has waived his presence.

(4) The respondent or his counsel shall have the right to present evidence and cross examine witnesses who may testify at the hearing.

(5) If the respondent is present at the hearing and is medicated, the court shall be informed of the medication and its common effects.

(6) The court shall cause a recording of the testimony of the hearing to be made, which shall be transcribed only in the event of an appeal from the judgment.

B. If the court finds by clear and convincing evidence that the respondent has a developmental disability and is either dangerous to himself or dangerous to others, it may render a judgment for his commitment. Courts committing persons to the custody of the department shall not make such commitments to specific private or public facilities but shall only commit such individuals to the department.

C. The department shall present a support plan to the committing court for its approval before formal admission into a specific residential living option or developmental disabilities services or both. The department shall present the support plan to the court annually for its review and approval. Any order of commitment to the department and any admission of a respondent in a residential living option shall be in the most integrated setting with consideration given the needs, desires and choice of the respondent, and shall be in accordance with the following conditions:

(1) The admission can be reasonably accommodated taking into account the resources available to the state and the needs of others with developmental disabilities.

(2) The respondent shall be subject to the admission criteria for that service setting.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.7. Duration and discharge of commitment

A. An initial judgment of commitment shall be for a period not to exceed one hundred eighty days. Continuation of commitment beyond one hundred eighty days requires a hearing conducted in accordance with the provisions of this Chapter.

(1) At least three days prior to the hearing, the department shall submit, to the court and to counsel for the respondent, an interdisciplinary evaluation regarding the need for continued commitment and a support profile.

(2) If the court determines that the person is still either dangerous to himself or dangerous to others, he shall be recommitted to the custody of the department for a period not to exceed one year.

(3) If the respondent is recommitted for three consecutive one year periods, then a subsequent judgment of commitment shall not exceed three years.

B. Any person who is not recommitted shall no longer be under court commitment, but shall continue to receive all supports and services as identified in his support plan, as long as he meets state criteria. If a person voluntarily seeks supports or services other than those provided by the department, the department must maintain documentation that the person or their legal representative has voluntarily made this request and no longer wants services provided directly by the department.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.8. Judicial commitment; appeals

A person who is involuntarily committed shall be allowed to appeal devolutively from the order to the court of appeal. Upon perfection of an appeal, it shall be heard in a summary manner taking preference over all other cases except similar matters.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.9. Judicial commitment; notice of rights

A. Every person involuntarily committed under this Section into any residential living option other than his home, shall be informed in writing at the time of admission of the following:

(1) Procedures for requesting release from commitment.

(2) Availability of counsel.

(3) Contact information about the Mental Health Advocacy Service and the Advocacy Center.

(4) Rights enumerated in R.S. 28:452.1 and any rules and regulations applicable to or concerning his conduct while residing in the residential living option.

B. If the person is illiterate or does not read or understand English, appropriate provisions should be made to provide him with this information. In addition, a copy of the information listed in this Subsection shall be available to the person at all times in his residential living option.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.10. Transfer of persons with developmental disabilities

The department shall develop procedures for handling requests for transfers and oppositions to transfers.

(1) No transfer shall occur without prior notice to the person receiving services, his curator, tutor, or other legal guardian and any other person of his choice.

(2) In the case of an involuntary admission, notice shall also be provided to the committing court of the proposed transfer.

(3) Such transfer shall be in accordance with applicable federal laws, regulations and interagency agreements.

(4) A temporary change in residential living options for specialized services not otherwise available shall not be considered a transfer for the purposes of this Section.

(5) Subject to applicable federal and state laws and regulations, the department shall have the authority to transfer persons placed in its custody and the office shall have the authority to transfer any person receiving developmental disabilities services within or from the Developmental Disabilities Services System.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.11. Rights of persons committed to the department

A. No person committed pursuant to this Chapter shall be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of Louisiana, or the Constitution of the United States solely because of his status as a committed person.

B. No committed person shall be presumed incompetent, nor shall such person be held incompetent except as determined by a court of competent jurisdiction. A determination of incompetence shall be separate from a judicial determination that a person should be involuntarily committed.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.12. Immunity from liability

Any admissions, detentions, confinements, commitments, discharges, or transfers of persons with developmental disabilities, or the denial of any thereof, in accordance with the provisions of this Chapter, by the department, the office, or its administrative units, its employees, human services authorities and districts, or employees of public or private agencies, with which the department has written agreements, who acted in good faith, reasonably and without negligence, shall be deemed to be administrative acts and such persons are hereby granted immunity from liability for damages arising out of such actions.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.13. Failure to obey an order or judgment

A. The failure by any facility administrator or director to obey an order or judgment committing a person with developmental disabilities to a public or private residential living option or developmental disability service or both shall not be construed as a contempt of any court, if the failure to obey is due to the inability to comply with the order or judgment because the residential living options or developmental disabilities services, or both, under their authority are not appropriate as defined in this Chapter.

B. The department, the office, other providers, and their employees and administrators of residential living options or developmental disabilities services and supports or both shall not be held in contempt of a court because of their refusal to comply with a commitment that is not consistent with the provisions of this Chapter.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.14. Criminal matters

A. Any person with a developmental disability found not guilty by reason of insanity or found to be presently lacking the mental capacity to proceed to trial may be committed for developmental disabilities services or residential living options, or both, in the manner provided for herein contradictorily with the district attorney and counsel for the defendant.

B. Insanity proceedings in any criminal case to determine whether a person is presently mentally capable to proceed to trial or was insane at the time of the commission of the crime are not affected by this Section and shall be in accordance with the Louisiana Code of Criminal Procedure.

C. Persons with developmental disabilities who are dangerous to others and who are charged with a crime of violence in accordance with R.S. 14:2(B) and who are committed to the custody of the department shall be admitted only to a residential living option that has available a secure area in order to ensure the safety and well-being of other residents and employees of the residential living option.

D. Persons with a developmental disability committed in accordance with the provisions of the Code of Criminal Procedure shall be discharged only in the manner provided by the Code of Criminal Procedure.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.15. Grievance procedure

A. A person receiving developmental disabilities supports and services or his responsible party may file a grievance against any public or private provider agency receiving state funding for developmental disabilities services in accordance with the Standards for Payment for Intermediate Care Facilities for People with Developmental Disabilities.

B. The department shall promulgate regulations, in accordance with the Administrative Procedure Act, for procedures governing the grievance process for provider agencies receiving state funding for developmental disability services which will include the manner of recourse if the person is not satisfied with the decision resulting from the grievance procedure.

C. Such agencies shall maintain and inform persons to whom they are providing supports and services of procedures for resolving grievances on behalf of those persons and of their right to file a grievance without fear of retaliation and to receive a prompt final decision.

Acts 2005, No. 128, §1, eff. June 22, 2005; Acts 2006, No. 163, §1.

§454.16. Appeal procedure

A. A person may file an administrative appeal to the bureau of appeals of the department regarding the following determinations:

(1) A finding by the office that the person does not qualify for system entry.

(2) Termination of a support or service.

(3) Discharge from the system.

(4) Other cases as stated in office policy or as promulgated in regulation.

B. There shall be no retaliation by an agency or the office or department for the filing of an appeal.

C. Notice of any appealable determination set forth in Subsection A of this Section by the office or by a public provider agency shall be given to the person receiving supports and services or applying for supports and services, his attorney of record or his responsible party, or all three parties if they are residing at different addresses.

D. Written notice shall be given providing the reasons for the decision and shall be sent by certified mail return receipt requested. If receipt is not confirmed, the agency or office must make a reasonable attempt to locate and contact the person and or his responsible party by telephone and then by regular mail.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.17. Rules and regulations

The office is authorized to establish regulations approved by the department, promulgated in accordance with the requirements of this Chapter and the Administrative Procedure Act.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§454.18. Advertisement and award of lease bid

The office and administrative units thereof are exempt from the requirement of R.S. 39:1643, regarding advertisement and award of lease bids, except that such exemption shall only be to lease privately owned buildings or space for the purpose of establishing living options.

Acts 2005, No. 128, §1, eff. June 22, 2005.

PART V. QUALITY ASSURANCE

§455.1. Quality standards

The office shall adopt standards for the quality of developmental disabilities services, shall disseminate those standards to persons with developmental disabilities and their families, stakeholders, and other interested parties, and shall establish mechanisms for feedback on the quality of services from persons with developmental disabilities and their families, stakeholders, and other interested parties. Activities concerning quality standards developed pursuant to R.S. 28:382.1 may be conducted concurrently with the requirements of this Section.

Acts 2005, No. 128, §1, eff. June 22, 2005.

§455.2. Assurances of consistency with regional and state planning

A. Applicants who plan to utilize state or federal funds for a new developmental disabilities service shall submit an application for review and approval to the office prior to the application to the department for licensure for the new service.

B. The office shall promptly review the application and may approve it according to its consistency with the state and regional planning and review for approval the program model for the population to be served. The provider shall submit the finding of the office as an attachment to its initial request for licensure to the department.

C. The provisions of this Part shall not be construed to conflict with the state planning requirements of Section 1122 of the Social Security Act.

Acts 2005, No. 128, §1, eff. June 22, 2005.