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Health and Welfare; assistance to families caring for profoundly mentally retarded persons

N.R.S. §435.— (new).

AB 119 (Bennett); STATS 1981, Ch 441

Under existing law, individual school districts are required to adopt special education programs¹ to insure a reasonably equal educational opportunity to handicapped minors² residing in Nevada.³ In addition, the boards of county commissioners are responsible for making provisions for the support, education, and care of mentally retarded⁴ children⁵ who are unable to pay for their support and care, or whose parents, relatives, or guardians are unable to pay for their support and care.⁶ Persons⁷ over the age of twenty-one who no longer qualify for special education programs⁸ may be eligible for training and care in a community training center⁹ if they are considered to be trainable¹⁰ or may qualify for care in a group care facility¹¹ if the division facility is designed to give appropriate treatment and care to these individuals.¹² Neither the group care facilities nor the community training centers are equipped to care for non-trainable persons.¹³

Chapter 441 is apparently intended to address the problem of care and support of essentially non-trainable persons by providing for monthly financial assistance to families or relatives for each profoundly¹⁴ mentally retarded person cared for in their home.¹⁵ Finan-

1. See N.R.S. §395.008 (definition of special education program).

2. See *id.* §§388.440, 388.520 (definition of handicapped minors; includes the mentally handicapped).

3. *Id.* §388.450. See *id.* §395.020.

4. See *id.* §433.174 (definition of mentally retarded).

5. See *id.* §435.007 (any person under the age of 18 years who may be eligible for mental retardation services).

6. See *id.* §§435.010 1, 435.020.

7. See generally *id.* §§433.044, 435.007 (definition of person). See also *id.* §615.110 (definition of handicapped individual).

8. See *id.* §395.020 (eligibility for benefits).

9. See *id.* §§435.130, 435.170 (definition of community training center), 435.190.

10. See generally *id.* §435.130 (community training centers intended to provide care and training for mentally and functionally retarded persons).

11. See *id.* §§435.007 (definition of group care facility), 435.060, 435.081 (group care facilities operated for the purpose of caring for and maintaining mentally retarded persons until they are able to function in a normal life situation).

12. *Id.* §435.081 1(b).

13. See *id.* §§435.081, 435.130.

14. The definition of profoundly mentally retarded as used by the Nevada Legislature is the definition adopted by the American Association on Mental Deficiency: the person's cognitive growth and development is five standard deviations below the norm and intelligence testing results in a score of 19 and below on the Stanford Binet Test and 24 and below on the Wechsler test. A few are able to learn basic survival skills, although there is practically no adaptive behavior. Telephone interview with Jack Middleton, Administrative Coordinator for Mental Retardation Programs, June 17, 1981 (notes on file at the *Pacific Law Journal*).

cial assistance is available if the Mental Hygiene and Mental Retardation Division (hereinafter referred to as the Division) finds that the person is receiving adequate care and neither the person nor the parent or relative with whom the person lives is reasonably able to pay for the individual's care and support.¹⁶ In addition to determining the eligibility of applicants, the Division is required to adopt regulations establishing procedures for applying for assistance, and for determining whether to provide the eligible applicant with assistance beyond the minimum amount established for the fiscal year.¹⁷

The eligibility requirements specified by Chapter 441 appear to be self-contradicting: to qualify for financial aid, the Division must find that the family or relative is unable to pay for adequate care for the profoundly mentally retarded person¹⁸ yet the applicants also must be found to be taking adequate care of the person.¹⁹ The Division, however, is charged with promulgating guidelines for determining eligibility²⁰ and it may adopt guidelines that remedy this problem.

15. See N.R.S. §435.— 1.

16. See *id.* §435.— 1(a), (b).

17. *Id.* §435.— 2(a), (b), (c).

18. See *id.* §435.— 1(b).

19. See *id.* §435.— 1(a).

20. See *id.* §435.— 2(b).

Health and Welfare; involuntary admission of the mentally ill— standard of proof

N.R.S. §433A.310 (amended).

SB 612 (Committee on Human Resources and Facilities); STATS 1981, Ch 536

Prior to the enactment of Chapter 536, Nevada law did not specify the standard of proof required in proceedings for involuntary admission of a person to a mental health facility.¹ Chapter 536 was apparently enacted in a response to the recent Supreme Court decision, *Addington v. Texas*.² Chapter 536 provides that when determining whether a mentally ill person should be involuntarily admitted to a mental health facility there must be clear and convincing evidence that the person is mentally ill and that the person exhibits observable behavior that he or she is dangerous to him or herself or others or that the

1. See generally STATUTES OF NEVADA 1975, c. 745, §86, at 1606 (amending N.R.S. §433A.310).

2. 441 U.S. 418 (1979).