

HOUSE No. 183

The Commonwealth of Massachusetts

PRESENTED BY:

John W. Scibak

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to level IV treatment interventions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John W. Scibak	2nd Hampshire
Brian A. Joyce	Norfolk, Bristol and Plymouth
Tom Sannicandro	7th Middlesex
Katherine Clark	32nd Middlesex
Ellen Story	3rd Hampshire
Matthew C. Patrick	3rd Barnstable
Denise Provost	27th Middlesex
Barbara A. L'Italien	18th Essex
Mary E. Grant	6th Essex
Kay Khan	11th Middlesex
William N. Brownsberger	24th Middlesex
Harold P. Naughton, Jr.	12th Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1904 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO LEVEL IV TREATMENT INTERVENTIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 6A is hereby amended by adding the following section:-

2 Section 16P.

3 (a) As used in this section, the following words shall, except as otherwise provided, have the
4 following meanings:-

5 "Level IV treatment intervention", any procedure which involves the systematic use of noxious or
6 intrusive stimuli which are generally known to be painful or otherwise unpleasant to individuals,
7 including but not limited to, procedures that: (1) cause physical pain to the individual, whether
8 administered directly or through intermediate devices, such as skin electric shock, inhalants, or ingestible
9 substances (excluding alcoholism treatments, such as disulfiram, Antabuse or Antabus); (2) involve sleep
10 or food deprivation; (3) include the introduction of additives to make food unpleasant; or (4) involve the
11 prompting of an individual to engage in a behavior which then results in an aversive stimulus being
12 applied as a punitive consequence.

13 "Department", the department of mental retardation, or its successor, the department of developmental
14 services, as established in Chapter 19B.

15 "Individual treatment plan", a plan approved by the statewide peer review committee pursuant to
16 regulations promulgated under this section.

17 "Secretary", secretary of the executive office of health and human services.

18 (b) The Department hereby creates a new classification of behavioral treatment interventions, to
19 be known as Level IV treatment interventions. The Department shall, with the advice and input of the
20 statewide peer review committee, promulgate rules and regulations consistent with this chapter regarding
21 the use of Level IV treatment interventions to address behaviors that present a pattern of conduct or
22 behavior caused by a disorder which poses a serious danger or risk of injury or harm to self or others by
23 any consumer of any public or private agency in the commonwealth receiving public funding or subsidy
24 through the federal government, the commonwealth, any of its political subdivisions, or another state or
25 political subdivision, thereof. The Department regulations regarding the use of Level IV treatment
26 interventions will govern all uses of such procedures by any public or private agency receiving public
27 funding through the federal government, the Commonwealth of Massachusetts, any of its political
28 subdivisions, or another state or political subdivision, thereof.

29 Level IV treatment interventions are designed for the treatment of certain types of dangerous or
30 self destructive behaviors following a pre-determined treatment protocol which includes highly punitive
31 techniques designed to teach an individual not to repeat those challenging behaviors. Level IV treatment
32 interventions are the most intrusive form of treatment interventions and they shall be considered to only
33 be used as a method to address behaviors that directly present a clear risk of injury or harm to self or
34 others. Level IV treatment interventions are not appropriate for addressing minor behavior problems,
35 even if said behaviors are identified as antecedents to targeted challenging behaviors. Level IV treatment
36 interventions should only be considered when reinforcement-based interventions and other less intrusive
37 treatments have failed, including programs developed by clinicians specially skilled in positive behavior
38 supports. Documentation of the fidelity of the application of all less intrusive interventions and the
39 completion of formal procedural reliability assessments must be provided in all proposed Level IV
40 treatment intervention submissions.

41 Level IV treatment interventions are restricted to those techniques and procedures that are
42 considered as evidence-based practices and meet the standards of being scientifically validated, as
43 demonstrated by their publication in peer-reviewed professional journals. All such proposed
44 interventions must have been demonstrated as clinically effective in the reduction of similar topographies
45 of challenging behaviors with participants within similar age ranges, diagnostic categories, and settings.
46 All such proposed interventions for children must be consistent with the Individuals with Disabilities
47 Education Act of 2004 (IDEA) and No Child Left Behind.

48 (c) There shall be a statewide peer review committee on Level IV treatment interventions,
49 hereinafter called the statewide committee, consisting of five members appointed by the governor for
50 terms of three years. The statewide committee shall be located within, but not subject to control by, the
51 executive office. Members of the statewide committee shall be residents of the commonwealth and
52 citizens of the United States. Two members of the statewide committee shall be licensed psychologists,
53 who meet the guidelines and standards of clause ~~(2)~~ (d) below, have 10 or more years of experience in
54 applied behavior analysis and behavior treatment of severe behavior problems, and shall have been
55 actively engaged in the practice of applied behavior analysis and behavior treatment of severe behavior
56 problems for the five years next preceding their appointment. Two members of the committee shall be
57 either Licensed Independent Behavior Analysts in the commonwealth or Board Certified Behavior
58 Analysts who meet the guidelines and standards of clause (d) below, have 10 or more years of experience
59 in applied behavior analysis and behavior treatment of severe behavior problems and shall have been
60 actively engaged in the practice of applied behavior analysis and behavior treatment of severe behavior
61 problems for the five years next preceding their appointment. One member of the statewide committee
62 shall be selected from and shall represent the public, subject to the provisions of section nine B of chapter
63 13.

64 In the case where a public or private agency in the commonwealth receives public funding from
65 another state or jurisdiction and seeks to utilize a Level IV procedure with a client whose permanent
66 residence is from that state or jurisdiction, said state or jurisdiction may recommend an individual who

67 meets the guidelines and standards of clause (d) below to serve as an “ad-hoc”, sixth member of the
68 statewide committee to review any and/or all proposed Level IV treatment interventions for residents
69 from said state or jurisdiction.

70 The statewide committee shall: (1) oversee all Level IV treatment interventions being
71 implemented with any person in the commonwealth who is served by a public or private agency receiving
72 public funding or subsidy through the federal government, the commonwealth, any of its political
73 subdivisions or another state or political subdivision thereof; appoint a Chair from its permanent
74 members; (3) review individual treatment plans and make recommendations to the Probate and Family
75 Court regarding the approval or disapproval of Level IV treatment interventions within such treatment
76 plans; (4) review and make recommendations to the department regarding guidelines and standards for
77 facility peer review committees; (5) review and make recommendations to the executive office for any
78 requested exclusions or waivers from the regulations governing Level IV treatment interventions; and (6)
79 be assisted in its duties by the executive office, which shall provide technical, technological, operational
80 and administrative support.

81 Members of the statewide committee may participate in any meeting by means of a conference
82 telephone or similar communications equipment by means of which all persons participating in the
83 meeting may simultaneously hear each other, and participation by such means shall constitute presence in
84 person at a meeting. Members may also transmit or receive any written materials discussed at a meeting
85 and transmit any written authorizations that may be required during the meeting by electronic facsimile or
86 other commercially acceptable transmission. A quorum shall consist of not less than a majority of the
87 members of the statewide committee participating in the meeting.

88 A member of the statewide committee shall be indemnified from any civil action brought for
89 damages to the same extent as provided for public employees in chapter 258, and shall be indemnified for
90 all expenses in the defense thereof provided, however, that the claim arose out of acts performed by such
91 member while acting within the scope of the member’s official duties.

92 (d) All Level IV treatment interventions shall be designed by an individual who is a Licensed
93 Applied Behavior Analyst, or is a Board Certified Behavior Analyst, or holds Specialty Certification in
94 Cognitive and Behavioral Psychology from the American Board of Professional Psychology, or is a
95 Licensed Psychologist with documented education, professional training and experience in applied
96 behavior analysis and behavioral treatment, and 5 years of full-time experience serving individuals within
97 the same age range and diagnostic category; demonstrating similar topographies of challenging behaviors
98 and utilizing similar treatment approaches as those proposed in the Level IV plan under review.
99 Individuals responsible for the design of Level IV treatment interventions will comply fully with the
100 Ethical Principles of Psychologists and the Code of Conduct of the American Psychological Association.
101 All Level IV treatment interventions submitted for review and approval must meet the standards outlined
102 within the Guidelines for Responsible Conduct of the Behavior Analysis Certification Board, and include
103 documentation that the challenging behaviors being addressed are not a function of a medical or
104 psychiatric disorder. Additionally, all such proposed interventions must include evidence of the
105 completion of a formal comprehensive functional behavioral assessment, a preference assessment, and
106 reinforcement strategies designed to teach functionally equivalent replacement behaviors. In addition to
107 the ongoing empirical measurement of all targeted challenging and replacement behaviors throughout any
108 approved Level IV treatment intervention, all such Level IV treatment interventions must also include
109 ongoing objective documentation of the trauma suffered by the individual or others as a result of the
110 challenging behaviors addressed within the treatment plan.

111 (e) Level IV treatment interventions shall only be implemented by staff persons who have
112 received specific training in the application of the intervention and the individualized treatment plan.
113 Documentation listing all qualified staff who received training in the Level IV treatment intervention and
114 the individuals who designed the treatment protocol and who administered each application of the Level
115 IV treatment intervention shall be incorporated in the client record.

116 All level IV treatment interventions shall be implemented only under the direct supervision and
117 physical presence of a Licensed Applied Behavior Analyst, a Board Certified Behavior Analyst, a

118 professional with Specialty Certification in Cognitive and Behavioral Psychology from the American
119 Board of Professional Psychology, or a Licensed Psychologist with documented education, professional
120 training and experience in applied behavior analysis and behavioral treatment.

121 (f) Each facility seeking to use Level IV treatment interventions shall establish a facility peer
122 review committee, hereinafter called the facility committee, whose membership shall include (1) a
123 minimum of two Licensed Applied Behavior Analysts or Board Certified Behavior Analysts or
124 psychologists with documented education, professional training and experience in applied behavior
125 analysis and behavioral treatment, (2) one psychologist with broad clinical expertise outside the specialty
126 of applied behavior analysis, (3) a physician, and (4) a public member who shall not, nor shall have been
127 within the period of five years immediately preceding his/her appointment either been employed by said
128 facility, been a recipient of services from said facility, nor having had any immediate family members
129 been an employee or recipient of services from said facility.

130 Prior to application to the statewide committee for authority to implement a Level IV behavior treatment
131 intervention, consent shall be obtained from the client (if competent) and the facility committee.

132 In cases of extreme emergencies, the agency serving the individual shall not be required to apply
133 for approval to the facility committee, but shall apply directly to the statewide committee for a 30-day
134 temporary approval of the intervention, provided, that the agency has secured informed consent from the
135 client (if competent). If such emergency application is approved by the statewide committee consistent
136 with clauses (g) and (h) below, the application must also be submitted, together with a copy of the
137 statewide committee's vote, prior to implementation, to the Probate and Family Court of the county in
138 which the client resides for approval through a substituted judgment review process.

139 (g) Prior to rendering a decision, the statewide committee shall permit the proponent of the use of
140 such interventions and any other interested person the opportunity to present materials in support of or in
141 opposition to the proposed treatment plan. Approval of a Level IV treatment intervention by the
142 statewide committee shall require an affirmative vote of a majority of the members participating at the
143 meeting when said Level IV treatment intervention was under review. The decision of the statewide

144 committee shall be in writing, with supporting reasons provided for its decision. A finding by the
145 statewide committee permitting Level IV treatment interventions with respect to any individual treatment
146 plan shall be submitted thereafter to the probate court of the county in which the client resides as part of
147 the court's independent review and approval of said treatment plan.

148 (h) Level IV treatment interventions shall not be initially approved by the statewide committee
149 unless the proponent of the use of such interventions provides clear and convincing evidence through the
150 evaluation protocol and ongoing behavioral data, that (i) the target behavior presents an immediate risk of
151 serious physical injury or harm to self or others; (ii) the Level IV procedures will lead to positive
152 outcomes and a significant decrease in the target behaviors; and (iii) that less intrusive treatments
153 continue to be unsuccessful or would present an immediate risk of serious physical injury or harm.

154 Level IV treatment interventions may be initially approved for no more than 30 days by the
155 statewide committee, and may be re-approved thereafter for additional 30-day periods, not to exceed six
156 months. Request for re-approval shall be subject to such conditions as the statewide committee may
157 designate, including a review of all existing data to confirm that the use of the Level IV treatment
158 intervention has led to positive outcomes and a significant decrease in the target behaviors. Any request
159 for the use of the Level IV treatment intervention beyond the 30-day trial shall require re-submission to
160 the statewide peer review committee and the probate court of the county in which the client resides as part
161 of the court's independent review and approval of said treatment plan. The statewide committee shall
162 petition the Commissioner of the Department to review all cases in which the continued use of Level IV
163 treatment interventions are requested beyond the six-month limit.

164 (i) The Secretary may, after a hearing pursuant to chapter 30A, deny, refuse, revoke, limit or
165 suspend a license of any recipient of funding or subsidy through the executive office for failure to comply
166 with the provisions of this section.

167 Except for emergency regulations adopted pursuant to Section 2 of chapter 30A, any regulation,
168 as defined in Section 1 of said chapter 30A, or any amendment or repeal of any such regulation adopted
169 by the Department pursuant to this section, shall, after compliance with all applicable provisions of this

170 section and said chapter 30A, except section 5, be submitted to the general court. Said Department shall
171 file the proposed regulation, amendment or repeal with the clerk of the house of representatives, together
172 with a statement of compliance with the pertinent provisions of said chapter 30A, except section 5. The
173 clerk of the house of representatives, with the approval of the president of the senate and the speaker of
174 the house of representatives, shall refer such regulations to the joint committee on children, families, and
175 persons with disabilities. Within 30 days after such referral, said legislative committee may hold a public
176 hearing on the regulations and shall issue a report to said Department. Said report shall contain any
177 proposed changes to the regulations voted upon by the legislative committee. The Department and the
178 statewide committee shall review and report and the Department shall adopt final regulations as deemed
179 appropriate in view of said report and shall file with the chairmen of the legislative committee its final
180 regulations. If the final regulations do not contain the changes proposed by the legislative committee, the
181 Department shall send a letter to the legislative committee accompanying the final regulations stating the
182 reasons why such proposed changes were not adopted. Not earlier than 45 days after the filing of such
183 letter and final regulations with said legislative committee, said Department shall file the final regulations
184 with the state secretary as provided in section 5 of said chapter 30a and said regulations shall thereupon
185 take effect.

186 If no such proposed changes to the regulations are made to the Department within 60 days of the
187 initial filing of the proposed regulation or any amendment or a repeal of such regulation with the clerk of
188 the house of representatives, the Department may file the final regulations with the state secretary as
189 provided in section 5 of the said chapter 30A and said regulations shall thereupon take effect.

190 SECTION 2. Within 90 days after the passage of this act, the Department, with the advice and input of
191 the statewide committee shall draft, pursuant to chapter 30A, proposed rules and regulations to the
192 General Court regarding the development, review, approval, and on-going review and monitoring process
193 for Level IV treatment interventions.

194 SECTION 3. The implementation of any Level IV treatment intervention beyond the scope of a court-
195 ordered treatment plan or the approval of the statewide committee, or by a staff member who does not

196 meet the requirement of section 16P of chapter 6A will be considered an act of mistreatment, pursuant to
197 section 13K of chapter 265 and shall be reported to the Disabled Persons Protection Commission.

198 SECTION 4. Except as provided herein, this act shall not otherwise alter the procedures for substituted
199 judgment review by the Probate and Family Court.