

HOUSE No. 02683

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia

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 establishing an independent office of quality assurance for developmentally disabled persons

.

PETITION OF:

NAME:

Angelo M. Scaccia

DISTRICT/ADDRESS:

14th Suffolk

HOUSE No. 02683

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 2683) of Scaccia for legislation to establish an independent office of quality assurance for mentally retarded persons Joint Committee on Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 179 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act establishing an independent office of quality assurance for developmentally disabled persons

□.

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

- 1 Preamble—
- 2 WHEREAS, A stronger system of monitoring and quality assurance is required on the state level
- 3 for individuals with developmental disabilities.
- 4 WHEREAS, The function of oversight, monitoring and quality assurance should be independent
- 5 of the agency providing the services,
- 6 SECTION 1. The Mass. General Laws are hereby amended by adding after chapter 19C, the
- 7 following chapter:—

8 1. Chapter 19E.

9 Office of Quality Assurance for Developmentally Disabled Persons.

10 Section 1. The following words as used in this chapter shall, unless the context otherwise
11 requires, have the following meanings:

12 “Office”, the independent office of quality assurance for persons with developmental disabilities.

13 “Department” the department of developmental disabilities.

14 “Commissioner”, the commissioner of the department of developmental disabilities.

15 “Director”, the director of the independent office of quality assurance for persons with
16 developmental disabilities.

17 “Person with developmental disabilities”, a person who, as a result of inadequately developed or
18 impaired intelligence, as determined by clinical authorities as described in the regulations of the
19 department of developmental disabilities is substantially limited in his ability to learn or adapt, as
20 judged by established standards available for the evaluation of a person’s ability to function in
21 the community; or a person who is otherwise eligible for department of developmental
22 disabilities services. A person with developmental disabilities may be considered mentally ill
23 provided that no person with developmental disabilities shall be considered mentally ill solely by
24 virtue of developmental disabilities

25 “Board of Directors”, the directors of the office of quality assurance for developmental
26 disabilities.

27 Section 2. Establishment of an Independent Office of Quality Assurance for Developmentally
28 Disabled Persons.

29 In order to protect the rights of developmentally disabled persons and to assure accountability of
30 all service providers, there shall be established an Independent Office of Quality Assurance,
31 hereinafter referred to as the office.

32 There shall be a Director to act as administrative head of the office. S/he shall be appointed by
33 majority vote of the state auditor, the governor, and the attorney general.

34 The person selected shall have experience in the delivery of services to the developmentally
35 disabled, be conversant with policies, statutes, rules and regulations related to developmental
36 disabilities currently in force and possess a background in civil and administrative law. The
37 Director shall be assisted by adequate staff and a board of directors.

38 The Director, pursuant to the provisions of chapter 30A shall make and, from time to time, revise
39 such regulations as may be necessary to carry out the functions set forth in this chapter.

40 Assistants and staff for the Independent Office of Quality Assurance shall be established via the
41 transfer of all currently authorized positions and budget in the Department of Developmental
42 Disabilities engaged in “internal” self-evaluation, monitoring, quality assurance and human
43 rights functions. The current budget and staff of the Governor’s Commission of Developmental
44 Disabilities will also be transferred to the office. Not less than 80 full time equivalent positions
45 shall comprise the office.

46 Section 3. Functions

47 Said office shall be independent of all agencies within the executive office of health and human
48 services. Said office shall be responsible for monitoring all elements of service provision for the
49 developmentally disabled described by statutes, rules and regulations, plus all federal
50 entitlements in which the commonwealth participates.

51 Subject to approval by the board of directors, the director of the office may lease, purchase, hold
52 and dispose of personal and real property facilitating execution of his duties.

53 The director may require by summons, the production of all records, reports, audits, reviews,
54 papers, books, documents, recommendations, correspondence and any other data and material
55 relevant to any matter under audit or investigation regarding service provision to a
56 developmentally disabled person. All records of the department, disabled persons protection
57 commission and the department of public health division of healthcare quality shall be accessible
58 to the office.

59 Subject to the approval of said board, the director may apply for and accept, on behalf of the
60 Commonwealth any federal, local or private grants, bequests, gifts or contributions to aid in the
61 financing of any of the programs or policies of the office, provided such acceptance does not
62 conflict with the independence of the office.

63 Such funds shall be received by the state treasurer on behalf of the Commonwealth and deposited
64 in a separate account and shall be expended under the direction of the director to accomplish the
65 mandates of the office. Federal funds paid as reimbursement shall be deposited in the General
66 Fund.

67 The office may make agreements with other departments and agencies of the Commonwealth
68 and may contract with other persons, including private agencies, to carry out any of the functions

69 and purposes under this chapter. The director shall establish standards and procedures governing
70 such agreements and contracts subject to the approval of the state auditor, the governor and the
71 attorney general.

72 The director may appoint such assistants and staff deemed necessary to perform adequate
73 monitoring of agency and contractor groups serving developmentally disabled persons with
74 special emphasis on the development of individual service plans and effective implementation of
75 these plans to each service recipient.

76 The director, the office and any person they may designate shall have access at any and all
77 reasonable times to any facility, residence, program, or part thereof for the developmentally
78 disabled, and to all relevant records, reports, materials, and employees, in order to allow them to
79 monitor the quality with which such needs are being met. Such authority can be used to establish
80 a program of citizen monitors.

81 Section 4. Responsibilities.

82 The office shall be responsible for the development of a fixed schedule and random method of
83 monitoring the effectiveness and quality of all service providers including facility and
84 community programs.

85 In order to carry out its mission of assuring a continued high level of care and to execute its
86 responsibility as set forth, the office shall establish its own procedures and mechanisms for
87 monitoring and evaluating the care of developmentally disabled persons, and shall undertake the
88 following: receive information, reports and complaints from employees, developmentally
89 disabled persons, their families or representatives and others regarding effectiveness and
90 adequacy of quality assurance mechanisms; report all cases of abuse, mistreatment and neglect

91 coming to the attention of the office in the normal course of its duties to the disabled persons
92 protection commission; identify areas where agencies are failing to comply with and enforce
93 applicable federal and state laws, regulations, standards and policies and require that those
94 agencies take action to correct inadequacies; investigations and reviews in order to draw
95 independent conclusions relative to the adequacy of care, the protection of individuals' rights,
96 the functioning of human rights committees, and the effectiveness of quality assurance
97 mechanisms, with specific attention to issues of the safety and security of developmentally
98 disabled persons; and subsequently require correction or resolution of problems. A report of the
99 findings of any such activity shall be provided to the head of the appropriate agency, as well as
100 his or her designated manager responsible for such service, and if problems are identified, such
101 designated manager shall make a written report within a suitable time frame as requested by the
102 director, but not more than ten working days, of actions taken to correct each problem; identify
103 and report on areas where agencies and service providers are demonstrating superior efforts in
104 the provision of services to developmentally disabled persons.

105 In addition, the office may: receive information and complaints from developmentally disabled
106 persons, their families or representatives and others regarding the adequacy of care and services
107 to these citizens; determine whether those individuals have made full use of existing procedures
108 for obtaining services, or otherwise addressing their concerns; and if they have not, fully inform
109 them of the appropriate mechanisms within the agency for doing so, and if they have sought but
110 not obtained relief from those mechanisms, or if existing mechanisms are inadequate to resolve
111 the problem, recommend or, if determined necessary by the director, mandate means of
112 resolution; shall receive, upon request from any agency of the state and any private service

113 provider assistance, information and data that will enable the office to fulfill its functions,
114 powers and duties.

115 The director shall report in writing, at least annually, and as deemed necessary to secure
116 corrective action, to the three appointment authorities. The report shall include: narrative and
117 statistical degree of compliance to ISP driven needs or developmentally disabled persons;
118 identification of agencies and/or contractor service providers deemed chronically deficient or
119 poorly administered; recommendations that would improve efficiency and cost effectiveness in
120 the service delivery system.

121 The director shall issue special reports as needed on issues or conditions in the course of the
122 office's oversight function.

123 The director office staff and the board shall have ready access for purposes of scheduled
124 auditing, random sampling, and when responding to specific complaints, to any and all public
125 and private facilities and programs contracting to serve developmentally disabled persons,
126 whether licensed or unlicensed.

127 The office shall conduct ongoing monitoring of compliance with regulations governing the care
128 of developmentally disabled persons; requesting and receiving status reports on the progress
129 toward completion of outstanding corrective action plans; death reports, class member
130 identification lists, reports of facility admissions, transfers and outplacements shall be provided
131 to the office by the department; maintaining contact with federal oversight agencies to identify
132 areas of concern where the Commonwealth has not complied with federal standards and to
133 ensure that the appropriate state agencies devise means for implementing compliance, to assure

134 continued entitlement; receive copies of compliance reviews conducted by the Health Care
135 Financing Administration.

136 Section 5. Resources.

137 Adequate resources will be made available to fund the office in accordance with the staffing
138 recommendations included herein. The director shall, in accordance with state regulations, select
139 the staff of the office, define staff responsibilities and establish appropriate compensation levels
140 for all employees.

141 The salary of the director shall not exceed the salary grade of the Commissioner developmental
142 disabilities.

143 Section 6. Board of Directors.

144 There shall be established a board of directors to the office. Said board shall advise and assist the
145 office in seeking accountability from the providers of service and care to developmentally
146 disabled persons.

147 The board of directors shall consist of fifteen members and shall be constituted as follows: one
148 representative from the Coalition of Families and Advocates for the Retarded, Inc. (COFAR);
149 one representative from Arc Massachusetts, Inc.; one representative from the Advocacy
150 Network; one representative of each of the five DDS Regional Citizen Advisory Boards; 5
151 citizen representatives selected from among professional associations in the fields of medicine,
152 nursing, psychology, social work and special education; the secretary of the executive office of
153 health and human services or his/her designee; the executive director of the disabled person
154 protection commission.

155 The board of directors shall meet at least monthly with the director, and at other times as the
156 director deems necessary and shall assist the director in planning and reviewing the activities of
157 the office; recommend to the director for his/her consideration, issues that need to be pursued; at
158 the director's request, review such additional reports and materials that would enable the office
159 to more effectively evaluate the care of developmentally disabled persons; bring issues to the
160 attention of the office that either aid in its evaluation of the quality of care to developmentally
161 disabled persons or warrant its intervention, as the director deems necessary and appropriate,
162 accompany office staff on visits to selected program locations; and serve as a vehicle for
163 communication between the Commonwealth's citizenry and the office.

164 The director shall, in accordance with the office's budget, make available to the board of
165 directors secretarial support and supplies, and reimbursement at reasonable expense, to enable
166 the board of directors to carry out its functions and duties.

167 Section 7. Evaluation.

168 Four years after the establishment of the office, an independent evaluation, under contract with
169 the State Auditor's Office, shall be conducted to determine the effectiveness of the office and
170 recommend appropriate actions such as continuance or other options as may be warranted to
171 include but not be limited to a merging of the office with the disabled persons protection
172 commission and/or a broadening of scope to include mentally ill persons and/or other disabled
173 populations.