

HOUSE No. 179

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act establishing an independent office of quality assurance for mentally retarded 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—WHEREAS, A stronger system of monitoring and quality assurance is
2 required on the state level for individuals with mental retardation.WHEREAS, The function of
3 oversight, monitoring and quality assurance should be independent of the agency providing the
4 services,

5 SECTION 1. The Mass. General Laws are hereby amended by adding after chapter 19C,
6 the following chapter:—

7 Chapter 19E. Office of Quality Assurance for Mentally Retarded Persons.

8 Section 1. The following words as used in this chapter shall, unless the context otherwise
9 requires, have the following meanings:“Office”, the independent office of quality assurance for
10 persons with mental retardation.“Department” the department of mental
11 retardation.“Commissioner”, the commissioner of the department of mental
12 retardation.“Director”, the director of the independent office of quality assurance for persons
13 with mental retardation.“Person with mental retardation”, a person who, as a result of

14 inadequately developed or impaired intelligence, as determined by clinical authorities as
15 described in the regulations of the department of mental retardation is substantially limited in his
16 ability to learn or adapt, as judged by established standards available for the evaluation of a
17 person's ability to function in the community; or a person who is otherwise eligible for
18 department of mental retardation services. A person with mental retardation may be considered
19 mentally ill provided that no person with mental retardation shall be considered mentally ill
20 solely by virtue of mental retardation. "Board of Directors", the directors of the office of quality
21 assurance for mental retardation. Section 2. Establishment of an Independent Office of Quality
22 Assurance for Mentally Retarded Persons. In order to protect the rights of mentally retarded
23 persons and to assure accountability of all service providers, there shall be established an
24 Independent Office of Quality Assurance, hereinafter referred to as the office. There shall be a
25 Director to act as administrative head of the office. S/he shall be appointed by majority vote of
26 the state auditor, the governor, and the attorney general. The person selected shall have
27 experience in the delivery of services to the mentally retarded, be conversant with policies,
28 statutes, rules and regulations related to mental retardation currently in force and possess a
29 background in civil and administrative law. The Director shall be assisted by adequate staff and a
30 board of directors. The Director, pursuant to the provisions of chapter 30A shall make and, from
31 time to time, revise such regulations as may be necessary to carry out the functions set forth in
32 this chapter. Assistants and staff for the Independent Office of Quality Assurance shall be
33 established via the transfer of all currently authorized positions and budget in the Department of
34 Mental Retardation engaged in "internal" self-evaluation, monitoring, quality assurance and
35 human rights functions. The current budget and staff of the Governor's Commission of Mental
36 Retardation will also be transferred to the office. Not less than 80 full time equivalent positions

37 shall comprise the office. Section 3. Functions Said office shall be independent of all agencies
38 within the executive office of health and human services. Said office shall be responsible for
39 monitoring all elements of service provision for the mentally retarded described by statutes, rules
40 and regulations, plus all federal entitlements in which the commonwealth participates. Subject to
41 approval by the board of directors, the director of the office may lease, purchase, hold and
42 dispose of personal and real property facilitating execution of his duties. The director may require
43 by summons, the production of all records, reports, audits, reviews, papers, books, documents,
44 recommendations, correspondence and any other data and material relevant to any matter under
45 audit or investigation regarding service provision to a mentally retarded person. All records of
46 the department, disabled persons protection commission and the department of public health
47 division of healthcare quality shall be accessible to the office. Subject to the approval of said
48 board, the director may apply for and accept, on behalf of the Commonwealth any federal, local
49 or private grants, bequests, gifts or contributions to aid in the financing of any of the programs or
50 policies of the office, provided such acceptance does not conflict with the independence of the
51 office. Such funds shall be received by the state treasurer on behalf of the Commonwealth and
52 deposited in a separate account and shall be expended under the direction of the director to
53 accomplish the mandates of the office. Federal funds paid as reimbursement shall be deposited in
54 the General Fund. The office may make agreements with other departments and agencies of the
55 Commonwealth and may contract with other persons, including private agencies, to carry out any
56 of the functions and purposes under this chapter. The director shall establish standards and
57 procedures governing such agreements and contracts subject to the approval of the state auditor,
58 the governor and the attorney general. The director may appoint such assistants and staff deemed
59 necessary to perform adequate monitoring of agency and contractor groups serving retarded

60 persons with special emphasis on the development of individual service plans and effective
61 implementation of these plans to each service recipient. The director, the office and any person
62 they may designate shall have access at any and all reasonable times to any mental retardation
63 facility, residence, program, or part thereof, and to all relevant records, reports, materials, and
64 employees, in order to allow them to monitor the quality with which such needs are being met.
65 Such authority can be used to establish a program of citizen monitors. Section 4.
66 Responsibilities. The office shall be responsible for the development of a fixed schedule and
67 random method of monitoring the effectiveness and quality of all service providers including
68 facility and community programs. In order to carry out its mission of assuring a continued high
69 level of care and to execute its responsibility as set forth, the office shall establish its own
70 procedures and mechanisms for monitoring and evaluating the care of mentally retarded persons,
71 and shall undertake the following: receive information, reports and complaints from employees,
72 mentally retarded persons, their families or representatives and others regarding effectiveness
73 and adequacy of quality assurance mechanisms; report all cases of abuse, mistreatment and
74 neglect coming to the attention of the office in the normal course of its duties to the disabled
75 persons protection commission; identify areas where agencies are failing to comply with and
76 enforce applicable federal and state laws, regulations, standards and policies and require that
77 those agencies take action to correct inadequacies; investigations and reviews in order to draw
78 independent conclusions relative to the adequacy of care, the protection of individuals' rights,
79 the functioning of human rights committees, and the effectiveness of quality assurance
80 mechanisms, with specific attention to issues of the safety and security of mentally retarded
81 persons; and subsequently require correction or resolution of problems. A report of the findings
82 of any such activity shall be provided to the head of the appropriate agency, as well as his or her

83 designated manager responsible for such service, and if problems are identified, such designated
84 manager shall make a written report within a suitable time frame as requested by the director, but
85 not more than ten working days, of actions taken to correct each problem; identify and report on
86 areas where agencies and service providers are demonstrating superior efforts in the provision of
87 services to mentally retarded persons. In addition, the office may: receive information and
88 complaints from mentally retarded persons, their families or representatives and others regarding
89 the adequacy of care and services to these citizens; determine whether those individuals have
90 made full use of existing procedures for obtaining services, or otherwise addressing their
91 concerns; and if they have not, fully inform them of the appropriate mechanisms within the
92 agency for doing so, and if they have sought but not obtained relief from those mechanisms, or if
93 existing mechanisms are inadequate to resolve the problem, recommend or, if determined
94 necessary by the director, mandate means of resolution; shall receive, upon request from any
95 agency of the state and any private service provider assistance, information and data that will
96 enable the office to fulfill its functions, powers and duties. The director shall report in writing, at
97 least annually, and as deemed necessary to secure corrective action, to the three appointment
98 authorities. The report shall include: narrative and statistical degree of compliance to ISP driven
99 needs of mentally retarded persons; identification of agencies and/or contractor service providers
100 deemed chronically deficient or poorly administered; recommendations that would improve
101 efficiency and cost effectiveness in the service delivery system. The director shall issue special
102 reports as needed on issues or conditions in the course of the office's oversight function. The
103 director office staff and the board shall have ready access for purposes of scheduled auditing,
104 random sampling, and when responding to specific complaints, to any and all public and private
105 facilities and programs contracting to serve mentally retarded persons, whether licensed or

106 unlicensed. The office shall conduct ongoing monitoring of compliance with regulations
107 governing the care of mentally retarded persons; requesting and receiving status reports on the
108 progress toward completion of outstanding corrective action plans; death reports, class member
109 identification lists, reports of facility admissions, transfers and outplacements shall be provided
110 to the office by the department; maintaining contact with federal oversight agencies to identify
111 areas of concern where the Commonwealth has not complied with federal standards and to
112 ensure that the appropriate state agencies devise means for implementing compliance, to assure
113 continued entitlement; receive copies of compliance reviews conducted by the Health Care
114 Financing Administration. Section 5. Resources. Adequate resources will be made available to
115 fund the office in accordance with the staffing recommendations included herein. The director
116 shall, in accordance with state regulations, select the staff of the office, define staff
117 responsibilities and establish appropriate compensation levels for all employees. The salary of the
118 director shall not exceed the salary grade of the Commissioner mental retardation. Section 6.
119 Board of Directors. There shall be established a board of directors to the office. Said board shall
120 advise and assist the office in seeking accountability from the providers of service and care to
121 mentally retarded persons. The board of directors shall consist of fifteen members and shall be
122 constituted as follows: one representative from the Coalition of Families and Advocates for the
123 Retarded, Inc. (COFAR); one representative from Arc Massachusetts, Inc.; one representative
124 from the Advocacy Network; one representative of each of the five DMR Regional Citizen
125 Advisory Boards; 5 citizen representatives selected from among professional associations in the
126 fields of medicine, nursing, psychology, social work and special education; the secretary of the
127 executive office of health and human services or his/her designee; the executive director of the
128 disabled person protection commission. The board of directors shall meet at least monthly with

129 the director, and at other times as the director deems necessary and shall assist the director in
130 planning and reviewing the activities of the office; recommend to the director for his/her
131 consideration, issues that need to be pursued; at the director's request, review such additional
132 reports and materials that would enable the office to more effectively evaluate the care of
133 mentally retarded persons; bring issues to the attention of the office that either aid in its
134 evaluation of the quality of care to mentally retarded persons or warrant its intervention, as the
135 director deems necessary and appropriate, accompany office staff on visits to selected program
136 locations; and serve as a vehicle for communication between the Commonwealth's citizenry and
137 the office. The director shall, in accordance with the office's budget, make available to the board
138 of directors secretarial support and supplies, and reimbursement at reasonable expense, to enable
139 the board of directors to carry out its functions and duties. Section 7. Evaluation. Four years after
140 the establishment of the office, an independent evaluation, under contract with the State
141 Auditor's Office, shall be conducted to determine the effectiveness of the office and recommend
142 appropriate actions such as continuance or other options as may be warranted to include but not
143 be limited to a merging of the office with the disabled persons protection commission and/or a
144 broadening of scope to include mentally ill persons and/or other disabled populations.