

**SENATE . . . . . No. 2540**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Ten**  
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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 of the General Laws is hereby amended by adding the  
2 following section:-

3           Section 16P. (a) As used in this section, the following words shall, except as otherwise  
4 provided, have the following meanings:-

5           "Department", the department of mental retardation, or its successor, the department of  
6 developmental services, established in chapter 19B.

7           "Executive office", the executive office of health and human services.

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

10          "Level IV treatment intervention", any procedure which involves the systematic use of  
11 noxious or intrusive stimuli which are generally known to be painful or otherwise unpleasant to  
12 individuals including, but not limited to, procedures that: (i) cause physical pain to the  
13 individual, whether administered directly or through intermediate devices, such as skin electric

14 shock, inhalants or ingestible substances but excluding alcoholism treatments including, but not  
15 limited to, Disulfiram, Antabuse or Antabus; (ii) involve sleep or food deprivation; (iii) include  
16 the introduction of additives to make food unpleasant; or (iv) involve the prompting of an  
17 individual to engage in a behavior which then results in an aversive stimulus being applied as a  
18 punitive consequence.

19 "Secretary", the secretary of health and human services.

20 (b) A classification of behavioral treatment interventions, to be known as Level  
21 IV treatment interventions, is hereby established and shall be utilized by the department. The  
22 department shall adopt rules and regulations consistent with this chapter relative to the use of  
23 Level IV treatment interventions to address behaviors that present a pattern of conduct or  
24 behavior caused by a disorder which poses a serious danger or risk of injury or harm to self or  
25 others by any consumer of a public or private agency in the commonwealth receiving public  
26 funding or subsidy through the federal government, the commonwealth, any of its political  
27 subdivisions or another state or political subdivision thereof. Such regulations shall govern all  
28 uses of such procedures in the commonwealth by any public or private agency receiving public  
29 funding through the federal government, the commonwealth, any of its political subdivisions or  
30 another state or political subdivision thereof.

31 Level IV treatment interventions shall be used as a method to address dangerous or self-  
32 destructive behaviors that directly present a clear risk of injury or harm to self or others. Level  
33 IV treatment interventions shall not be used for addressing a minor behavior problem, even if  
34 such behavior is identified as an antecedent to targeted challenging behavior. Level IV treatment  
35 interventions shall be an option only if reinforcement-based interventions and other less intrusive

36 treatments have failed, including programs developed by clinicians specially skilled in positive  
37 behavior supports. Documentation of the application of all less intrusive interventions and the  
38 completion of formal procedural reliability assessments shall be provided in all proposed Level  
39 IV treatment intervention submissions.

40 Level IV treatment interventions shall be restricted to those techniques and  
41 procedures that are considered as evidence-based practices and meet the standards of being  
42 scientifically validated, as demonstrated by publication thereof in peer-reviewed professional  
43 journals. All such proposed interventions shall have been demonstrated as clinically effective in  
44 the reduction of similar topographies of challenging behaviors with participants within similar  
45 age ranges, diagnostic categories and settings. Proposed interventions for children shall be  
46 consistent with the Individuals with Disabilities Education Act of 2004 and the No Child Left  
47 Behind Act of 2001.

48 (c) There shall be a statewide peer review committee on Level IV treatment  
49 interventions, hereinafter called the statewide committee, consisting of 5 members appointed by  
50 the governor for terms of 3 years. The statewide committee shall be located within, but not  
51 subject to control by, the executive office. Members of the statewide committee shall be  
52 residents of the commonwealth and citizens of the United States. Two members of the statewide  
53 committee shall be licensed psychologists, who meet the guidelines and standards of clause (2)  
54 of subsection (d), have 10 or more years of experience in applied behavior analysis and behavior  
55 treatment of severe behavior problems, and have been actively engaged in the practice of applied  
56 behavior analysis and behavior treatment of severe behavior problems for licensed independent  
57 behavior analysts in the commonwealth or board certified behavior analysts who meet the  
58 guidelines and standards of clause (2) of said subsection (d), have 10 or more years of experience

59 in applied behavior analysis and behavior treatment of severe behavior problems and have been  
60 actively engaged in the practice of applied behavior analysis and behavior treatment of severe  
61 behavior problems for the 5 years next preceding their appointment. One member of the  
62 statewide committee shall be selected from, and shall represent the public, subject to section 9B  
63 of chapter 13.

64 In the case of a public or private agency in the commonwealth that receives public  
65 funding from another state or jurisdiction and seeks to utilize a Level IV procedure with a client  
66 whose permanent residence is located within that state or jurisdiction, such state or jurisdiction  
67 may recommend an individual who meets the guidelines and standards of clause (d) below to  
68 serve as an “ad-hoc”, sixth member of the statewide committee to review any or all proposed  
69 Level IV treatment interventions for residents from such state or jurisdiction.

70 The statewide committee shall: (i) oversee the implementation of Level IV  
71 treatment interventions with any person in the commonwealth served by a public or private  
72 agency receiving public funding or subsidy through the federal government, the commonwealth,  
73 any of its political subdivisions or another state or political subdivision thereof; (ii) appoint a  
74 chair from among its permanent members; (iii) review individual treatment plans and make  
75 recommendations to the probate and family court relative to the approval or denial of Level IV  
76 treatment interventions within such treatment plans; (iv) review and make recommendations to  
77 the department relative to guidelines and standards for facility peer review committees; (v)  
78 review and make recommendations to the executive office for any requested exclusions or  
79 waivers from the regulations governing Level IV treatment interventions; and (vi) request  
80 assistance from the executive office in order to fulfill its duties, as necessary. The executive  
81 office may provide technical, technological, operational and administrative support as requested.

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

90           A member of the statewide committee shall be indemnified from any civil action  
91 brought for damages to the same extent as provided for public employees in chapter 258, and  
92 shall be indemnified for all expenses in the defense thereof if the claim arose out of acts  
93 performed by such member while acting in the lawful scope of such member's official duties. A  
94 member of the statewide committee, however, shall not be considered a public employee by  
95 virtue of the member's membership on the statewide committee.

96           (d) All Level IV treatment interventions shall be designed by an individual who is  
97 a licensed applied behavior analyst, or is a board certified behavior analyst, or holds specialty  
98 certification in cognitive and behavioral psychology from the American Board of Professional  
99 Psychology, or is a licensed psychologist with verified education, professional training and  
100 experience in applied behavior analysis and behavioral treatment and 5 years of full-time  
101 experience serving individuals within the same age range and diagnostic category, demonstrating  
102 similar topographies of challenging behaviors and utilizing similar treatment approaches as those  
103 proposed in the Level IV plan under review. Individuals responsible for the design of Level IV  
104 treatment interventions shall comply with the ethical principles of psychologists and the code of

105 conduct of the American Psychological Association. All Level IV treatment interventions  
106 submitted for review and approval shall meet the standards outlined within the guidelines for  
107 responsible conduct of the behavior analysis certification board and include documentation that  
108 the challenging behaviors being addressed are not a function of a medical or psychiatric  
109 disorder. Such proposed interventions shall include evidence of the completion of a formal  
110 comprehensive functional behavioral assessment, a preference assessment and reinforcement  
111 strategies designed to teach functionally equivalent replacement behaviors. In addition to the  
112 ongoing empirical measurement of all targeted challenging and replacement behaviors  
113 throughout any approved Level IV treatment intervention, such Level IV treatment interventions  
114 shall include ongoing objective documentation of the trauma suffered by the individual or others  
115 as a result of the challenging behaviors addressed within the treatment plan.

116 (e) Level IV treatment interventions shall be implemented only by staff persons  
117 who have received specific training in the application of the intervention and the individualized  
118 treatment plan. Documentation listing all qualified staff who received training in the Level IV  
119 treatment intervention and the individuals who designed the treatment protocol and who  
120 administered each application of the Level IV treatment intervention shall be incorporated in the  
121 client record.

122 All level IV treatment interventions shall be implemented under the direct  
123 supervision and physical presence of a licensed applied behavior analyst, a board certified  
124 behavior analyst, a professional with specialty certification in cognitive and behavioral  
125 psychology from the American Board of Professional Psychology, or a licensed psychologist  
126 with verified education, professional training and experience in applied behavior analysis and  
127 behavioral treatment.

128 (f) Each facility seeking to use Level IV treatment interventions shall establish a  
129 facility peer review committee, hereinafter called the facility committee, whose membership  
130 shall include a minimum of: (1) 2 licensed applied behavior analysts or board certified behavior  
131 analysts or psychologists with verified education, professional training and experience in applied  
132 behavior analysis and behavioral treatment; (2) 1 psychologist with broad clinical expertise  
133 outside the specialty of applied behavior analysis; (3) 1 physician; and (4) 1 member of the  
134 public who shall not, nor shall have been within the period of 5 years immediately preceding his  
135 appointment, either employed by such facility, a recipient of services from such facility, nor  
136 having had any immediate family members been an employee or recipient of services from such  
137 facility.

138 Prior to application to the statewide committee for authority to implement a Level IV  
139 behavior treatment intervention, consent shall be obtained from the client, if competent, and the  
140 facility committee.

141 In the case of an emergency, the agency serving the individual shall not be  
142 required to apply for approval to the facility committee, but shall apply directly to the statewide  
143 committee for a 30-day temporary approval of the intervention if that agency has secured  
144 informed consent from the client, if competent. If such emergency application is approved by  
145 the statewide committee in accordance with clauses (g) and (h), the application shall also be  
146 submitted, together with a copy of the statewide committee's vote, to the probate and family  
147 court of the county in which the client resides for approval through a substituted judgment  
148 review process prior to implementation of the Level IV behavior treatment intervention.

149 (g) Prior to rendering a decision, the statewide committee shall permit the  
150 proponent of the use of such intervention and any other interested person the opportunity to  
151 present materials in support of, or in opposition to, the proposed treatment plan. Approval of a  
152 Level IV treatment intervention by the statewide committee shall require an affirmative vote of a  
153 majority of the members participating at the meeting while the Level IV treatment intervention is  
154 under review. The decision of the statewide committee shall be in writing, with supporting  
155 reasons provided for its decision. A finding by the statewide committee permitting a Level IV  
156 treatment intervention relative to any individual treatment plan shall be submitted thereafter to  
157 the probate court of the county in which the client resides as part of the court's independent  
158 review and approval of such treatment plan.

159 (h) A level IV treatment intervention shall not be initially approved by the  
160 statewide committee unless the proponent of the use of such intervention provides clear and  
161 convincing evidence, through the evaluation protocol and ongoing behavioral data, that: (i) the  
162 target behavior presents an immediate risk of serious physical injury or harm to self or others; (ii)  
163 the Level IV procedures will lead to positive outcomes and a significant decrease in the target  
164 behaviors; and (iii) that less intrusive treatments continue to be unsuccessful or would present an  
165 immediate risk of serious physical injury or harm.

166 Level IV treatment interventions may be initially approved for not more than 30  
167 days by the statewide committee and may be re-approved thereafter for additional 30-day periods  
168 not to exceed 6 months. Request for re-approval shall be subject to such conditions as the  
169 statewide committee may designate, including a review of all existing data to confirm that the  
170 use of the Level IV treatment intervention has led to positive outcomes and a significant decrease  
171 in the target behaviors. Any request for the use of the Level IV treatment intervention beyond



172 the 30-day trial shall require re-submission to the statewide peer review committee and the  
173 probate court of the county in which the client resides as part of the court's independent review  
174 and approval of said treatment plan. The statewide committee shall petition the commissioner of  
175 the department to review all cases in which the continued use of Level IV treatment interventions  
176 are requested beyond the 6-month limit.

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

180 Except for emergency regulations adopted pursuant to section 2 of chapter 30A, any  
181 regulation, as defined in section 1 of said chapter 30A, or any amendment or repeal of any such  
182 regulation adopted by the department pursuant to this section, shall, after compliance with this  
183 section and said chapter 30A, except section 5, be submitted to the general court. The  
184 department shall file the proposed regulation, amendment or repeal with the clerk of the house of  
185 representatives, together with a statement of compliance with said chapter 30A, except section  
186 5. The clerk of the house of representatives, with the approval of the president of the senate and  
187 the speaker of the house of representatives, shall refer such regulations to the joint committee on  
188 children, families and persons with disabilities. Within 30 days after such referral, said  
189 legislative committee may hold a public hearing on the regulations and shall issue a report to said  
190 department. The report shall contain any proposed changes to the regulations voted upon by the  
191 legislative committee. The department and the statewide committee shall review and report and  
192 the department shall adopt final regulations as deemed appropriate in view of said report and  
193 shall file with the chairpersons of the legislative committee its final regulations. If the final  
194 regulations do not contain the changes proposed by the legislative committee, the department

195 shall send a letter to the legislative committee accompanying the final regulations stating the  
196 reasons why such proposed changes were not adopted. Not earlier than 45 days after the filing of  
197 such letter and final regulations with said legislative committee, the department shall file the  
198 final regulations with the state secretary as provided in section 5 of said chapter 30A and the  
199 regulations shall thereupon take effect.

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

205 SECTION 2. Within 90 days after the passage of this act, the department, with the  
206 advice and input of the statewide committee, shall draft, pursuant to chapter 30A of the General  
207 Laws, proposed rules and regulations for submission to the General Court relative to the  
208 development, review, approval and on-going review and monitoring process for Level IV  
209 treatment intervention.

210 SECTION 3. The implementation of any Level IV treatment intervention beyond the  
211 scope of a court-ordered treatment plan or the approval of the statewide committee, or by a staff  
212 member who does not meet the requirements of section 16P of chapter 6A of the General Laws  
213 shall be considered an act of mistreatment, pursuant to section 13K of chapter 265 of the General  
214 Laws, and shall be reported to the disabled persons protection commission.

215 SECTION 4. Except as provided herein, this act shall not otherwise alter the procedures  
216 for substituted judgment review by the probate and family court.