

# SENATE . . . . . No. 45

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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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 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  
4 the following meanings:-

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

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

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

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

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

Level IV treatment interventions are designed for the treatment of certain types of dangerous or self destructive behaviors following a pre-determined treatment protocol which includes highly punitive techniques designed to teach an individual not to repeat those challenging behaviors. Level IV treatment interventions are the most intrusive form of treatment interventions and they shall be considered to only be used as a method to address behaviors that

35 directly present a clear risk of injury or harm to self or others. Level IV treatment interventions  
36 are not appropriate for addressing minor behavior problems, even if said behaviors are identified  
37 as antecedents to targeted challenging behaviors. Level IV treatment interventions should only  
38 be considered when reinforcement-based interventions and other less intrusive treatments have  
39 failed, including programs developed by clinicians specially skilled in positive behavior  
40 supports. Documentation of the fidelity of the application of all less intrusive interventions and  
41 the completion of formal procedural reliability assessments must be provided in all proposed  
42 Level IV treatment intervention submissions.

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

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

58 applied behavior analysis and behavior treatment of severe behavior problems for the five years  
59 next preceding their appointment. Two members of the committee shall be either Licensed  
60 Independent Behavior Analysts in the commonwealth or Board Certified Behavior Analysts who  
61 meet the guidelines and standards of clause (d) below, have 10 or more years of experience in  
62 applied behavior analysis and behavior treatment of severe behavior problems and shall have  
63 been actively engaged in the practice of applied behavior analysis and behavior treatment of  
64 severe behavior problems for the five years next preceding their appointment. One member of  
65 the statewide committee shall be selected from and shall represent the public, subject to the  
66 provisions of section nine B of chapter 13.

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

73 The statewide committee shall: (1) oversee all Level IV treatment interventions being  
74 implemented with any person in the commonwealth who is served by a public or private agency  
75 receiving public funding or subsidy through the federal government, the commonwealth, any of  
76 its political subdivisions or another state or political subdivision thereof; appoint a Chair from its  
77 permanent members; (3) review individual treatment plans and make recommendations to the  
78 Probate and Family Court regarding the approval or disapproval of Level IV treatment  
79 interventions within such treatment plans; (4) review and make recommendations to the  
80 department regarding guidelines and standards for facility peer review committees; (5) review

and make recommendations to the executive office for any requested exclusions or waivers from the regulations governing Level IV treatment interventions; and (6) be assisted in its duties by the executive office, which shall provide technical, technological, operational and administrative support.

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

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

(d) All Level IV treatment interventions shall be designed by an individual who is a Licensed Applied Behavior Analyst, or is a Board Certified Behavior Analyst, or holds Specialty Certification in Cognitive and Behavioral Psychology from the American Board of Professional Psychology, or is a Licensed Psychologist with documented education, professional training and experience in applied behavior analysis and behavioral treatment, and 5 years of full-time experience serving individuals within the same age range and diagnostic category; demonstrating

similar topographies of challenging behaviors and utilizing similar treatment approaches as those proposed in the Level IV plan under review. Individuals responsible for the design of Level IV treatment interventions will comply fully with the Ethical Principles of Psychologists and the Code of Conduct of the American Psychological Association. All Level IV treatment interventions submitted for review and approval must meet the standards outlined within the Guidelines for Responsible Conduct of the Behavior Analysis Certification Board, and include documentation that the challenging behaviors being addressed are not a function of a medical or psychiatric disorder. Additionally, all such proposed interventions must include evidence of the completion of a formal comprehensive functional behavioral assessment, a preference assessment, and reinforcement strategies designed to teach functionally equivalent replacement behaviors. In addition to the ongoing empirical measurement of all targeted challenging and replacement behaviors throughout any approved Level IV treatment intervention, all such Level IV treatment interventions must also include ongoing objective documentation of the trauma suffered by the individual or others as a result of the challenging behaviors addressed within the treatment plan.

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

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

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

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

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

In cases of extreme emergencies, the agency serving the individual shall not be required to apply for approval to the facility committee, but shall apply directly to the statewide committee for a 30-day temporary approval of the intervention, provided, that the agency has secured informed consent from the client (if competent). If such emergency application is approved by the statewide committee consistent with clauses (g) and (h) below, the application

must also be submitted, together with a copy of the statewide committee's vote, prior to implementation, to the Probate and Family Court of the county in which the client resides for approval through a substituted judgment review process.

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

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

Level IV treatment interventions may be initially approved for no more than 30 days by the statewide committee, and may be re-approved thereafter for additional 30-day periods, not to



170 exceed six months. Request for re-approval shall be subject to such conditions as the statewide  
171 committee may designate, including a review of all existing data to confirm that the use of the  
172 Level IV treatment intervention has led to positive outcomes and a significant decrease in the  
173 target behaviors. Any request for the use of the Level IV treatment intervention beyond the 30-  
174 day trial shall require re-submission to the statewide peer review committee and the probate  
175 court of the county in which the client resides as part of the court's independent review and  
176 approval of said treatment plan. The statewide committee shall petition the Commissioner of the  
177 Department to review all cases in which the continued use of Level IV treatment interventions  
178 are requested beyond the six-month limit.

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

182 Except for emergency regulations adopted pursuant to Section 2 of chapter 30A, any  
183 regulation, as defined in Section 1 of said chapter 30A, or any amendment or repeal of any such  
184 regulation adopted by the Department pursuant to this section, shall, after compliance with all  
185 applicable provisions of this section and said chapter 30A, except section 5, be submitted to the  
186 general court. Said Department shall file the proposed regulation, amendment or repeal with the  
187 clerk of the house of representatives, together with a statement of compliance with the pertinent  
188 provisions of said chapter 30A, except section 5. The clerk of the house of representatives, with  
189 the approval of the president of the senate and the speaker of the house of representatives, shall  
190 refer such regulations to the joint committee on children, families, and persons with disabilities.  
191 Within 30 days after such referral, said legislative committee may hold a public hearing on the  
192 regulations and shall issue a report to said Department. Said report shall contain any proposed

changes to the regulations voted upon by the legislative committee. The Department and the statewide committee shall review and report and the Department shall adopt final regulations as deemed appropriate in view of said report and shall file with the chairmen of the legislative committee its final regulations. If the final regulations do not contain the changes proposed by the legislative committee, the Department shall send a letter to the legislative committee accompanying the final regulations stating the reasons why such proposed changes were not adopted. Not earlier than 45 days after the filing of such letter and final regulations with said legislative committee, said Department shall file the final regulations with the state secretary as provided in section 5 of said chapter 30a and said regulations shall thereupon take effect.

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

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

SECTION 3. The implementation of any Level IV treatment intervention beyond the scope of a court-ordered treatment plan or the approval of the statewide committee, or by a staff member who does not meet the requirement of section 16P of chapter 6A will be considered an

214 act of mistreatment, pursuant to section 13K of chapter 265 and shall be reported to the Disabled  
215 Persons Protection Commission.

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