## HOUSE . . . . . . . No. 4047

## The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 15, 2014.

The committee on Ways and Means, to whom was referred the Bill permanently establishing a state autism commission (House, No. 3777), reports recommending that the same ought to pass with an amendment substituting therefor a Bill relative to assisting individuals with autism and other intellectual or developmental disabilities (House, No. 4047).

For the committee,

BRIAN S. DEMPSEY.

## The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act relative to assisting individuals with autism and other intellectual or developmental disabilities.

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

SECTION 1. Chapter 6 of the General Laws is hereby amended by inserting after section
 216 the following section:-

3 Section 217. (a) There shall be a commission on autism located within, but not subject to 4 the control of, the executive office of health and human services. The commission shall consist 5 of 34 members and shall be comprised of: the secretary of health and human services, or a 6 designee, who shall serve as chair; 1 member of the house of representatives appointed by the 7 speaker; 1 member of the house of representative appointed by the minority leader of the house; 8 1 member of the senate appointed by the senate president; 1 member of the senate appointed by 9 the minority leader of the senate; the commissioner of developmental services, or a designee; the 10 commissioner of mental health, or a designee; the secretary of education, or a designee; the 11 director of housing and community development, or a designee; the secretary of labor and 12 workforce development, or a designee; the commissioner of the massachusetts rehabilitation 13 commission, or a designee; the commissioner of early education and care, or a designee; the 14 commissioner of elementary and secondary education, or a designee; the commissioner of higher 15 education, or a designee; the secretary of elder affairs, or a designee; the commissioner of 16 children and families, or a designee; the commissioner of public health, or a designee; the 17 director of the office of masshealth, or a designee; 1 person appointed by the secretary of 18 education from the community college system; the director of the division of autism, or a 19 designee; and 14 persons to be appointed by the governor, 7 of whom shall be representatives of 20 statewide, regional or national autism groups including members of Advocates for Autism of 21 Massachusetts, the Autism Insurance Resource Center, Massachusetts Advocates for Children, 22 the Arc of Massachusetts, Autism Speaks, the Lurie Center and the Asperger Association of New 23 England. Members of the commission shall be persons with demonstrated interest, experience

24 and expertise in autism and related services and shall serve for a term of 2 years, without

25 compensation.

26 (b) The commission shall appoint an executive director for the purpose of promoting the 27 goals of the commission and improving commission functions through the coordination and 28 standardization of programs, operations and procedures. The executive director shall have a 29 working knowledge of the autism service delivery system and agencies providing these services, 30 legislative advocacy experience and a personal connection to autism. The executive director 31 may expend such funds as are appropriated therefor, together with additional funds from federal 32 grants and other contributions that may be made available for these purposes, and may appoint 33 other personnel as is deemed necessary for the efficient management of the office and shall 34 devote full time to the duties of the office. Duties of the executive director shall include, but not 35 be limited to: (i) legislative and budgetary advocacy of the 13 recommendations of the March 36 2013 Massachusetts Autism Commission Report with periodic benchmarks and cost estimates to 37 a coordinated, system-wide response supporting people of all ages on the autism spectrum; (ii) 38 coordination of commission meetings; (iii) coordination with relevant state agencies; and (iv) 39 completion of the annual report.

40 (c) The commission shall make recommendations and monitor the implementation of 41 policies impacting individuals with autistic spectrum disorders, which shall include, but not be 42 limited to, Asperger's syndrome, high functioning autism and pervasive development disorder. 43 The commission shall investigate the range of services and supports necessary for such 44 individuals to achieve their full potential across their lifespan, including, but not limited to, 45 investigating issues related to public education, job attainment and employment, including 46 supported employment, provision of adult human services, post-secondary education, 47 independent living, community participation, housing, social and recreational opportunities, 48 behavioral services based on best practices to ensure emotional well-being, mental health 49 services and issues related to access for families of children with autism spectrum disorder and 50 adults who are from linguistically and culturally diverse communities. The commission shall 51 meet at least quarterly, but may meet more often as the executive director recommends. The 52 commission shall file an annual report, on or before March 1, with the governor, the joint 53 committee on children, families and people with disabilities and the joint committee on health 54 care financing outlining unmet needs and trends in autism services, supports and treatments for 55 the autism population, including any recommendations for regulatory and legislative action 56 necessary to provide or improve such services or supports. The commission shall monitor the 57 implementation of its recommendations and update recommendations to reflect current research 58 and service needs as necessary.

59 SECTION 2. Chapter 15C of the General Laws is hereby amended by inserting after
 60 section 28 the following section:-

61 Section 29. (a) As used in this section the following words shall, unless the context
62 clearly requires otherwise, have the following meanings:-

63 "Achieving a Better Life Experience account" or "ABLE account", a savings and
64 qualified disabilities expense account established and maintained by the authority, or a
65 designated administrator, pursuant to this chapter and its implementing regulations for the
66 purposes of qualified disability expenses.

67 "Designated administrator", any corporation whose powers and privileges are provided 68 for in any general or special law, whether for profit or not, designated by the authority for the 69 purpose of administering ABLE accounts.

70 "Disability verification", with respect to an individual a verification, to the authority or its designated administrator, by the designated beneficiary or the parent or guardian of the 71 72 designated beneficiary that: (i)(1) the person is an individual with a disability; and (2) includes a 73 copy of the designated beneficiary's diagnosis that such person is an individual with a disability, 74 signed by a physician; (ii) is receiving or, for purposes of Title XIX of the Social Security Act, is 75 deemed to be, or treated as, receiving from the office of Medicaid, benefits under the 76 supplemental security income program under title XVI of such Act, or whose benefits under such 77 program are suspended other than by reason of misconduct; or (iii) is receiving disability benefits 78 under title II of such Act.

"Individual with a disability", an individual with a disability for a year if the individual, regardless of age, has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind.

84 "Physician", a medical or osteopathic doctor licensed to practice medicine in the85 commonwealth.

"Qualified disability expenses", expenses made for the benefit of an individual with a
disability, or for the benefit of a special needs trust established for the benefit of such an
individual.

(b) There shall be within the authority, the achieving a better life experience program for
the purposes of administering ABLE accounts established to encourage and assist individuals
and families in saving private funds for the purpose of supporting individuals with disabilities.
Under the program, a person may make contributions to an ABLE account for the purpose of
meeting the qualified disability expenses of the designated beneficiary of the account.

94 (c) For the purposes of this section and subclause (17) of section 3 of chapter 62, the
 95 following expenses shall be qualified disability expenses if such expenses are made for the

96 benefit of an individual with a disability who is a designated beneficiary and are related to such97 disability:

98 (1) expenses for education, including tuition for pre-school through post-secondary
99 education, which shall include higher education expenses as defined by 26 U.S.C. §529,
100 subsection (e)(3)(A) and expenses for books, supplies, and educational materials related to

101 preschool and secondary education, tutors, and special education services;

(2) expenses for a primary residence, including rent, purchase of a primary residence oran interest in a primary residence, mortgage payments, real property taxes, and utility charges;

(3) expenses for transportation, including the use of mass transit, the purchase ormodification of vehicles, and moving expenses;

(4) expenses related to obtaining and maintaining employment, including job-related
 training, assistive technology, and personal assistance supports;

(5) expenses for health and wellness, including premiums for health insurance, mental
 health, medical, vision, and dental expenses, habilitation and rehabilitation services, durable
 medical equipment, therapy, respite care, long term services and supports, nutritional
 management, communication services and devices, adaptive equipment, assistive technology,
 and personal assistance;

(6) expenses for financial management and administrative services; legal fees; expenses
for oversight; monitoring; home improvements, and modifications, maintenance and repairs, at
primary residence; or funeral and burial expenses; and

(7) expenses for assistive technology and personal support with respect to any itemdescribed in this section.

(d) A person may make contributions to an ABLE account established pursuant to
regulations promulgated by the authority for the purpose of meeting the qualified disability
expenses of the designated beneficiary of the account, and which meets the other requirements of
this section.

(e) An ABLE account shall be a qualified disabilities expense account if: (1) it provides
that purchases or contributions may only be made in cash; (2) provides separate accounting for
each designated beneficiary; (3) provides that any contributor to, or designated beneficiary
under, such program may not directly or indirectly direct the investment of any contributions to
the program or any earnings thereon; and (4) provides adequate safeguards to prevent
contributions on behalf of a designated beneficiary in excess of those necessary to provide for
the qualified disability expenses of the beneficiary.

(f) An individual shall be treated by the authority or its designated administrator as an
individual with a disability if the person files a disability verification with the authority or such
designated administrator.

(g) The authority shall file an annual report with the department of developmental
services, the joint committee on children, families and persons with disabilities, and the house
and senate committees on ways and means on the usage of ABLE accounts under section 5 of
chapter 62. The report shall include, but not be limited to: (1) the number of people with an
ABLE account; (2) the total amount of contributions to such accounts; (3) the total amount and
nature of distributions from such accounts; and (4) issues relating to the abuse of such accounts.

(h) The authority may promulgate regulations and enter into agreements to implement theprovisions of this chapter.

SECTION 3. Section 1 of chapter 19B of the General Laws, as appearing in the 2012
Official Edition, is hereby amended by inserting after the word "disability", in line 8, the
following words:- or persons with a developmental disability.

SECTION 4. Said section 1 of said chapter 19B, as so appearing, is hereby further
amended by striking out, in line 23, the words "mental retardation services" and inserting in
place thereof the following words:- services for persons with an intellectual disability.

SECTION 5. Said section 1 of said chapter 19B, as so appearing, is hereby further
amended by striking out, in lines 27 and 28, the words "intellectual disabilities services" and
inserting in place thereof the following words:- services for persons with an intellectual disability
or a developmental disability.

SECTION 6. Section 2 of said chapter 19B, as so appearing, is hereby amended by
striking out, in line 2, the words "mental retardation" and inserting in place thereof the following
words:- developmental services.

153 SECTION 7. Said section 2 of said chapter 19B, as so appearing, is hereby further154 amended by striking out, in line 18, the words "mental retardation".

SECTION 8. Said section 2 of said chapter 19B, as so appearing, is hereby amended by
striking out, in line 31, the words "mental retardation" and inserting in place thereof the
following words:- persons with intellectual disabilities and services served for people with
developmental disabilities.

SECTION 9. Section 12 of said chapter 19B, as so appearing, is hereby amended by
 striking out, in line 4, the words "mental retardation programs" and inserting in place thereof the
 following words:- persons with an intellectual disability.

SECTION 10. Chapter 19B of the General Laws is hereby amended by inserting aftersection 12 the following section:-

164 Section 12A. The department, subject to appropriation, shall establish a comprehensive 165 program of community developmental disability services, and shall establish standards for the 166 development of programs at appropriate geographic areas to ensure access to needed services. 167 The commissioner shall ensure citizen, consumer and family participation in the oversight of 168 community developmental disability services at all such levels, including the local level.

SECTION 11. Section 13 of chapter 19B of the General Laws, as appearing in the 2012
Official Edition, is hereby amended by inserting after the words, "disability services", in line 3,
the following words:- and community developmental disability services.

SECTION 12. Said section 13 of said chapter 19B, as so appearing, is hereby further
amended by inserting after the word "disability", in line 9, the following words:- and
developmental disability services.

SECTION 13. Said section 13 of said chapter 19B, as so appearing, is hereby further
amended by inserting after the word "services", in line 13, the following words:- and
developmental disability services.

SECTION 14. Chapter 19B of the General Laws is hereby amended by the inserting after
 section 15 the following section:-

180 Section 15A. (a) The department shall issue for a term of 2 years to any program which 181 offers to the public residential or day care services and is represented as providing treatment of 182 persons with a developmental disability, and which is deemed by it to be responsible and suitable 183 to meet applicable licensure standards and requirements, except that: (1) the department may 184 license those programs providing care but not treatment of persons with an intellectual disability; 185 and (2) licensing by the department is not required where such residential or day care treatment 186 is provided within an institution or facility licensed by the department of public health under the 187 provisions of chapter one hundred and eleven. Whether or not a license is issued under clause 188 (1), the department shall make regulations for the operation of such programs. The department 189 may grant the type of license which it deems suitable for the program. The department shall fix 190 reasonable fees for licenses and renewal thereof.

(b) Each program licensed under the provisions of this section shall maintain and make
available to the department such statistical and diagnostic data as may be required by the
department.

(c) Each such program licensed by the department shall be subject to the supervision,
 visitation and inspection of the department, and the department may make regulations for the
 proper operation of such programs.

197 (d) The department may refuse to grant, suspend, revoke, limit or restrict the applicability 198 of or refuse to renew a license granted under this section, subject to the procedural requirements 199 of section thirteen of chapter thirty A for any violation of its regulations or standards concerning 200 such program. The department may temporarily suspend a license prior to a hearing in cases of 201 emergency if it deems that such suspension would be in the public interest; provided, however, 202 that upon request of an aggrieved party, a hearing pursuant to section thirteen of chapter thirty A, 203 shall be held after the license is suspended. Any party aggrieved by a decision of the department 204 under this section may appeal in accordance with the provisions of section fourteen of chapter 205 thirty A.

(e) No program for which a license is required under paragraph (a), shall provide
residential or day care services for the treatment or care of persons with a developmental
disability unless it has obtained a license under the provisions of this section. The superior court
sitting in equity shall have jurisdiction, upon petition of the department, to restrain any violation
of the provisions of this section or to take such other action as equity and justice may require.
Whoever violates the provisions of this section shall be punished for the first offense by a fine of
not more than one thousand dollars or by imprisonment for not more than two years.

(f) Each person served by such a program, shall be granted protection from commercial and private exploitation of any kind. No person shall be video taped, audio taped, photographed, interviewed or exposed to the public without either the person's express written consent, or that of the person's legal guardian. Whoever violates the provision of this paragraph shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than two and one-half years in a house of correction or by imprisonment for not more than five years in the state prison.

(g) Notwithstanding the provisions of paragraphs (a) to (f), inclusive, any child care
center, family child care home, family child care system, family foster care or group care facility
as defined in section 1A of chapter 15D, shall not be subject to the provisions of this section.

SECTION 15. Section 17 of chapter 19B of the General Laws, as appearing in the 2012
 Official Edition, is hereby amended by striking out, in lines 1 and 2, the words "mentally
 retarded persons" and inserting in place thereof the following words:- persons with an
 intellectual disability or a developmental disability.

SECTION 16. Said section 17 of said chapter 19B, as so appearing, is hereby further
amended by striking out, in line 11, the words "mentally regarded person" and inserting in place
thereof the following words:- persons with an intellectual disability or a developmental
disability.

SECTION 17. Section 18 of said chapter 19B, as so appearing, is hereby amended by
 striking out, in line 10, the words "mentally ill and persons with an intellectual disability" and

inserting in place thereof the following words:- persons with mental illness and intellectual ordevelopmental disabilities.

SECTION 18. Said section 18 of said chapter 19B, as so appearing, is hereby further
amended by striking out, in lines 14 and 15, the words "mentally ill and mentally retarded
individuals" and inserting in place thereof the following words:- persons with mental illness and
intellectual or developmental disabilities.

SECTION 19. Said section 18 of said chapter 19B, as so appearing, is hereby further
amended by striking out, in line 17, the words "disability and mentally ill" and inserting in place
thereof the following words:- or developmental disability and a mental illness.

SECTION 20. Said section 18 of said chapter 19B, as so appearing, is hereby further
amended by inserting after the word "disability", in line 30, the following words:- or a
developmental disability.

SECTION 21. Clause (a) of subsection B of section 3 of chapter 62 of the General Laws,
 as so appearing, is hereby amended by inserting, after subclause (16) the following subclause:-

(17) Distributions from a fund established pursuant to the ABLE program under section
248 29 of chapter 15C, to the extent otherwise included in income, when such distributions are used
249 to pay qualified disability expenses.

SECTION 22. Section 38G of chapter 71 of the General Laws, as so appearing, is hereby
 amended by inserting after the word "disabilities", in line 266, the following words:- , including
 children with autism.

253 SECTION 23. Section 38G <sup>1</sup>/<sub>2</sub> of said chapter 71, as so appearing, is hereby amended by 254 inserting before the definition of "board", the following definition:-

255 "Autism or Autism Spectrum Disorders" shall have the same meaning as the most recent256 edition of the Diagnostic and Statistical Manual of Mental Disorders.

SECTION 24. Said section 38G <sup>1</sup>/<sub>2</sub> of said chapter 71, as so appearing, is hereby further
 amended by inserting the following paragraph:-

259 The board shall provide an endorsement in autism which shall include both coursework 260 and field experience for licensed special education teachers to acquire the competencies 261 necessary to conduct assessments, develop appropriate individualized education programs, 262 provide specially designed instruction and related services, and consult and collaborate with 263 other educators, including general education teachers, in order to meet the unique and complex 264 educational needs of students with autism in the least restrictive environment. Competencies 265 shall also include, but not be limited to, the impact of autism on verbal and nonverbal 266 communication, social interaction, sensory experiences, behaviors, literacy and academic

- 267 achievement. The requirements for the endorsement in autism, as promulgated by the board, can
- also be used to satisfy course requirements necessary to obtain a professional license. The board
- shall promulgate regulations specifying the subject matter knowledge, skills, and competencies
- 270 required for such endorsement, including requirements to incorporate renewal of the
- endorsement as part of the individual professional development plan required pursuant to section
- 27238G. Said regulations shall also specify components necessary for preparation programs
- 273 offering an endorsement in autism, which shall be included in the department's process for
- approving preparation programs.
- 275 SECTION 25. Section 1 of chapter 123B of the General Laws, as so appearing, is hereby 276 amended by inserting after the definition of "independent funds" the following definition:-

277 "Person with a developmental disability", a person with a severe, chronic disability of an 278 individual 5 years of age or older that: (i) is attributable to a mental or physical impairment's 279 resulting from intellectual disability, autism or Prader-Willi Syndrome; (ii) is manifested before 280 the individual attains age 22; (iii) is likely to continue indefinitely; (iv) results in substantial 281 functional limitations in 3 or more of the following areas of major life activity; (1) self-care; (2) 282 receptive and expressive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for 283 independent living; and (7) economic self-sufficiency; (v) Reflects the individual's need for a 284 combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated, 285 286 except that such term, when applied to infants and young children means individuals from birth 287 to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired 288 conditions with a high probability of resulting in developmental disabilities if services are not 289 provided. A person who has a developmental disability may be considered to be mentally ill; 290 provided, however, that no person with a developmental disability shall be considered to be 291 mentally ill solely by reason of the person's developmental disability.

SECTION 26. Section 2 of said chapter 123B, as so appearing, is hereby amended by
 adding the following paragraph:-

The department shall, in accordance with section 2 of chapter 30A and subject to appropriation, adopt regulations consistent with this chapter which establish procedures and the highest practicable professional standards for community services for persons with developmental disabilities.

SECTION 27. The department of developmental services shall file an annual report reviewing its progress in the implementation of this act on or before the first business day of February starting with February 3, 2015. The report shall include, but not be limited to: (1) the number of new clients with autism or Prader Willi Syndrome; (2) the number of individuals, if any, on a waitlist for the services provided for in this act and the reasons for and the expected duration of the waitlist; (3) the number of additional staff hired to assess and evaluate the new clients and services; (4) the number of staff hired to deliver, manage and administer the new
services; (5) challenges encountered and met in serving these new clients; (6) challenges that
continue and those that are foreseen in the near future; (7) additional costs incurred in serving
these new clients; and (8) savings if any realized.

308 SECTION 28. There is hereby established a special commission to make an investigation 309 and study of employment training and employment opportunities for persons with autism 310 spectrum disorder (ASD), and to make recommendations in regard thereto. The commission 311 shall determine the current status of such employment training and employment opportunities 312 including, but not limited to, vocational training programs for teen-aged and young adult persons 313 with ASD and shall make recommendations for providing appropriate employment training and 314 employment opportunities for the population of residents in the commonwealth diagnosed with 315 ASD. Additionally, the commission shall review the rise in the prevalence of ASD diagnoses 316 among children in the past 30 years and shall make estimates of the number of children, aged 21 317 or younger, with ASD who will become adults in the coming decades and the resulting need for 318 employment training for those ASD children and employment opportunities for those ASD 319 adults, and shall recommend a plan-of-action for the commonwealth in regard thereto. The 320 special commission shall consist of 15 members, including 2 members of the senate, 1 of whom 321 shall be appointed by the minority leader, 2 members of the house of representatives, 1 of whom 322 shall be appointed by the minority leader, the secretary of labor and workforce development or ar 323 designee, the secretary of education or a designee, the director of the commonwealth corporation 324 or a designee, the commissioner of the Massachusetts rehabilitation commission or a designee, 325 the commissioner of elementary and secondary education or a designee, and 6 persons whom 326 shall be appointed by the governor, 3 of whom shall be representatives of private organizations, 327 2 of whom shall be representatives of advocates for autism of Massachusetts, and 1 of whom 328 shall be representative of the Asperger's Association of New England. The commission shall 329 report to the General Court the results of its investigation and study and its recommendations, if 330 any, by filing the same with the clerks of the senate and house of representatives, and the 331 Massachusetts commission on autism as established by section 217 of chapter 6 of the General 332 Laws on or before June 30, 2015.

333 SECTION 29. There is hereby established a special commission to make an investigation 334 and study of the present, and anticipated future, statewide affordable supportive housing needs 335 for the commonwealth's population of persons with autism spectrum disorder (ASD). The 336 commission shall develop and conduct a statewide housing survey to determine the current status 337 of affordable supportive housing stock for adults with ASD, and shall make recommendations in 338 regard thereto. Additionally, the commission shall review the rise in the prevalence of ASD 339 diagnoses among children in the past 30 years and shall make estimates of the number of 340 children, aged 21 or younger with ASD who will become adults in the coming decades and the 341 resulting need for affordable supportive housing for those ASD adults, and shall recommend a 342 plan-of-action for the commonwealth in regard thereto. The special commission shall consist of

343 15 members, including 2 members of the senate, 1 of whom shall be appointed by the minority 344 leader, 2 members of the house of representatives, 1 of whom shall be appointed by the minority 345 leader, the secretary of housing and economic development or a designee, the director of housing 346 and community development or a designee, the commissioner of developmental services or a 347 designee, the director of Massachusetts housing finance agency or a designee, the director of the 348 Massachusetts development finance agency or a designee; and 6 persons to be appointed by the 349 governor, 2 of whom shall be representatives of statewide autism organizations, 2 of whom shall 350 be a representative of the Asperger's Association of New England and 2 of whom shall be named 351 by Advocates for Autism of Massachusetts. The commission shall report to the General Court 352 the results of its investigation and study and its recommendations by filing the same with the 353 clerks of the senate and house of representatives, and the Massachusetts commission on autism, 354 as established by section 217 of chapter 6 of the General Laws on or before June 30, 2015. 355 SECTION 30. The Massachusetts education finance authority shall promulgate 356 regulations pursuant to section 29 of chapter 15C of the General Laws on or before December 357 31.2014. 358 SECTION 31. This act shall apply to taxable years beginning after the date of the 359 enactment of this act.

SECTION 32. For 1 year after the board has promulgated regulations as required under
 section 24, teachers who have previously been employed serving primarily students with autism
 shall be eligible to receive an autism endorsement, provided that they demonstrate the

363 knowledge, skills, and competencies necessary to receive such endorsement, subject to

364 regulations promulgated by the board of elementary and secondary education.

365 SECTION 33. The board of elementary and secondary education shall promulgate the 366 regulations required pursuant to section 24 on or before September 1, 2014.