

HOUSE No. 4373

Text of a further amendment (Mr. Dempsey of Haverhill) to the Senate amendment of the House Bill relative to assisting individuals with autism and other intellectual or developmental disabilities(House, No. 4047). July 30, 2014.

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

By striking out all after the enacting clause and inserting in place thereof the following:—

1 "SECTION 1. Chapter 6 of the General Laws is hereby amended by adding the following
2 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 35members 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 director
17 of the office of Medicaid or a designee; 1 person appointed by the secretary of education from
18 the community college system; the director of the division of autism or a designee; 1 person
19 appointed by the commissioner of developmental services who shall have clinical knowledge of
20 smith-magenis syndrome; and 14 persons to be appointed by the governor, 1 of whom shall have
21 a diagnosis of autism spectrum disorder, 1 of whom shall be a representative of Advocates for
22 Autism of Massachusetts, 1 of whom shall be a representative of the Autism Insurance Resource
23 Center, 1 of whom shall be a representative of Massachusetts Advocates for Children, 1 of whom
24 shall be a representative of the Arc of Massachusetts, 1 of whom shall be a representative of
25 Autism Speaks, Inc., 1 of whom shall be a representative of the Lurie Center and 1 of whom

shall be a representative of the Asperger's Association of New England, Inc. Members of the commission shall be persons with demonstrated interest, experience and expertise in autism and related services and shall serve for a term of 4 years, without compensation. Any member shall be eligible for reappointment. Vacancies shall be filled for the remainder of the unexpired term. Any member may be removed by the governor for cause.

(b) There shall be an executive director of the committee. The executive director shall be appointed by the governor from candidates recommended by the committee. The executive director may be removed by the governor for cause. The executive director shall promote the goals of the commission and improve commission functions through the coordination and standardization of programs, operations and procedures. The executive director shall have a working knowledge of the autism service delivery system and agencies providing these services, legislative advocacy experience and a personal connection to autism. The executive director may: expend appropriated funds together with additional funds from federal grants and other contributions, which may be made available for these purposes; and appoint other necessary personnel for the efficient management of the office. Expenditures for salaries and for other administrative functions shall be approved by the commission. Duties of the executive director shall include, but not be limited to: (i) reporting on the progress of implementation of the 13 recommendations of the March 2013 Massachusetts autism commission report with periodic benchmarks and cost estimates for a coordinated, system-wide response supporting people of all ages on the autism spectrum; (ii) coordination of commission meetings; (iii) coordination with relevant state agencies; and (iv) completion of the annual report.

(c) The commission shall make recommendations on policies impacting individuals with autistic spectrum disorders, which shall include, but not be limited to, asperger's syndrome, high functioning autism, smith-magenis syndrome and pervasive development disorder. The commission shall investigate the range of services and supports necessary for such individuals to achieve their full potential across their lifespan, including, but not limited to, investigating issues related to public education, higher education, job attainment and employment, including supported employment, provision of adult human services, post-secondary education, independent living, community participation, housing, social and recreational opportunities, behavioral services based on best practices to ensure emotional well-being, mental health services and issues related to access for families of children with autism spectrum disorder and adults who are from linguistically and culturally diverse communities. The commission shall meet at least quarterly, or as frequently as the executive director recommends. The commission shall file an annual report, on or before March 1, with the governor, the joint committee on children, families and persons with disabilities and the joint committee on health care financing outlining unmet needs and trends in autism services, supports and treatments for the autism population, including any recommendations for regulatory and legislative action necessary to provide or improve such services or supports. The commission shall monitor the implementation

of its recommendations and update recommendations to reflect current research and service needs as necessary.

SECTION 2. Chapter 15C of the General Laws is hereby amended by adding the following section:-

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

‘Achieving a better life experience account’ or ‘ABLE account’, a savings and qualified disabilities expense account established and maintained by the authority, or a designated administrator, pursuant to this section and its implementing regulations for the purposes of qualified disability expenses.

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

‘Disability verification’, a verification, to the authority or its designated administrator, by the designated beneficiary or the parent or guardian of the designated beneficiary that: (i) includes a copy of the designated beneficiary’s diagnosis, which shall specify that such person is an individual with a disability and shall be signed by a physician or a licensed clinical psychologist; and (ii) the designated beneficiary is either (1) receiving benefits under the supplemental security income program under Title XVI of the Social Security Act or whose benefits under such program are suspended for a reason other than misconduct, (2) for purposes of Title XIX of the Social Security Act, deemed to be or treated as, receiving benefits from the office of Medicaid under the supplemental security income program under Title XVI of the Social Security Act or whose benefits under such program are suspended for a reason other than misconduct or (3) receiving disability benefits under Title II of the Social Security Act.

‘Individual with a disability’, an individual who, 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.

‘Physician’, a medical or osteopathic doctor licensed to practice medicine in the 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 to meet the qualified disability expenses of the designated beneficiary of the account.

(c) For the purposes of this section and subparagraph (17) of paragraph (a) of Part B of section 3 of chapter 62 the following expenses shall be qualified disability expenses if such expenses are made for the benefit of an individual with a disability who is a designated beneficiary and the expenses are related to such disability:

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

(2) expenses for a primary residence, including rent, purchase of a primary residence or an 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 or modification 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 and monitoring;

(7) expenses for home improvements and modifications, maintenance and repairs at a primary residence;

(8) expenses for a funeral or burial; and

(9) expenses for assistive technology and personal support with respect to any item described in this section.

(d) A person may make contributions to an ABLE account to meet the qualified disability expenses of the designated beneficiary of the account; provided that the account and contributions meet the other requirements of this section and regulations promulgated by the authority.

(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) The authority, or its designated administrator, shall treat an individual 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. 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 this section.

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.

SECTION 7. Said section 2 of said chapter 19B, as so appearing, is hereby further 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 further amended by striking out, in line 31, the words ‘mental retardation’ and inserting in place thereof the following words:- persons with an intellectual disability or a developmental disability.

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. Said chapter 19B is hereby further amended by inserting after section 12 the following section:-

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

SECTION 11. Section 13 of said chapter 19B, 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.

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. Said chapter 19B is hereby further amended by the inserting after section 15 the following section:-

Section 15A. (a) (1) The department shall issue a license, for a term of 2 years, to any program that offers residential or day care services to the public and provides treatment for persons with a developmental disability; provided, that prior to issuing or renewing a license the department shall determine whether the program is responsible, suitable and meets applicable licensure standards and requirements.

(2) Notwithstanding paragraph (1), the department may license programs that provide care but not treatment for persons with a developmental disability.

(3) The department shall not require a license under this section where such residential or day care treatment is provided within an institution or facility licensed by the department of public health under chapter 111. The department may grant the type of license which it deems

199 suitable for a program. The department shall fix reasonable fees for licenses and the renewal
200 thereof. The department shall promulgate regulations for the operation of programs licensed
201 under paragraphs (1) and (2).

202 (b) Each program licensed pursuant to this section shall: (i) maintain and make available
203 to the department such statistical and diagnostic data as may be required by the department and
204 (ii) be subject to the supervision, visitation and inspection of the department.

205 (c) The department may refuse to grant or renew a license and may suspend, revoke, limit
206 or restrict the applicability of a license granted under this section, subject to the procedural
207 requirements of section 13 of chapter 30A for a violation of its regulations or standards
208 concerning such program. The department may temporarily suspend a license prior to a hearing
209 in cases of emergency, if it deems that such suspension would be in the public interest; provided,
210 however, that upon request of an aggrieved party, a hearing shall be held after the license is
211 suspended. Any party aggrieved by a decision of the department under this section may appeal
212 under section 14 of said chapter 30A.

213 (d) No program, for which a license is required under paragraph (a), shall provide
214 residential or day care services for the treatment or care of persons with a developmental
215 disability unless it has obtained a license under this section. The superior court sitting in equity
216 shall have jurisdiction, upon petition of the department, to restrain any violation of this section or
217 to take such other action as equity and justice may require. Whoever violates this section shall be
218 punished for the first offense by a fine of not more than \$1,000 or by imprisonment for not more
219 than 2 years in a house of correction.

220 (e) Each individual served by such a program shall be granted protection from
221 commercial and private exploitation. No person shall be video taped, audio taped, photographed,
222 interviewed or exposed to the public without express written consent from the individual or the
223 individual's legal guardian. Whoever violates this paragraph shall be punished by a fine of not
224 more than \$2,000 or by imprisonment for not more than 2½ years in a house of correction or by
225 imprisonment for not more than 5 years in the state prison.

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

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

233 SECTION 16. Said section 17 of said chapter 19B, as so appearing, is hereby further
234 amended by striking out, in line 11, the words 'any mentally regarded person competitively

employed,’ and inserting in place thereof the following words:- a competitively employed individual 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 persons with an intellectual or developmental disability.

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 persons with an intellectual or developmental disability.

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. Paragraph (a) of Part B of section 3 of chapter 62 of the General Laws, as so appearing, is hereby amended by adding the following subparagraph:-

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

SECTION 23. Section 38G ½ of said chapter 71, as so appearing, is hereby amended by inserting before the definition of ‘board’, the following definition:-

‘Autism or autism spectrum disorders’ shall have the same meaning as the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.

SECTION 24. Said section 38G ½ of said chapter 71, as so appearing, is hereby further amended by adding the following paragraph:-

The board shall provide an endorsement in autism which shall include both coursework and field experience for licensed special education teachers to acquire the competencies necessary to conduct assessments, develop appropriate individualized education programs, provide specially designed instruction and related services and consult and collaborate with other

educators, including general education teachers, in order to meet the unique and complex educational needs of students with autism in the least restrictive environment. Competencies shall also include, but not be limited to, the impact of autism on verbal and nonverbal communication, social interaction, sensory experiences, behaviors, literacy and academic achievement. All content taught as part of this specialization shall be consistent with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., for evidence based practices. The requirements for the endorsement in autism, as promulgated by the board, may 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 required for such endorsement, including requirements to incorporate renewal of the endorsement as part of the individual professional development plan required pursuant to section 38G. Said regulations shall also specify components necessary for preparation programs offering an endorsement in autism, which shall be included in the department's process for approving preparation programs.

SECTION 25. Chapter 118E of General Laws is hereby amended by inserting after section 10G the following section:-

Section 10H. Subject to the availability of federal financial participation, the division shall cover medically necessary treatments for persons younger than 21 years old who are receiving medical coverage under this chapter and who are diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist. If federal funds are available to the commonwealth, said coverage shall include, but shall not be limited to, services for applied behavior analysis supervised by a board certified behavior analyst and dedicated and non-dedicated augmentative and alternative communication devices, including, but not limited to medically necessary tablets.

SECTION 26. Section 1 of chapter 123B of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after the definition of 'independent funds' the following definition:-

'Person with a developmental disability', (1) an individual 5 years of age or older with a severe, chronic disability that: (i) is attributable to a mental or physical impairment resulting from intellectual disability, autism, smith-magenis syndrome or Prader-Willi syndrome; (ii) is manifested before the individual attains age 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (1) self-care; (2) receptive and expressive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special, interdisciplinary or generic services, supports or other assistance that is of a lifelong or extended duration and is individually planned and coordinated; or (2) an individual under the age of 5 who has a substantial developmental delay or specific congenital or acquired condition with a high probability that the condition will

result in a developmental disability if services are not provided. A person who has a developmental disability may be considered to be mentally ill; provided, however, that no person with a developmental disability shall be considered to be mentally ill solely by reason of the person's developmental disability.

SECTION 27. 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 27A. The department of developmental services and the department of mental health shall establish and implement a plan to provide services to individuals who have both a mental illness and a developmental disability and are also eligible for services from both the department of developmental services and the department of mental health. When developing the plan, the departments shall consider (i) ways to facilitate communication between the departments, (ii) protocols to determine which services shall be provided by which department and (iii) ways to ensure that an individual who is eligible for services from both departments receives all services for which an individual is eligible. The plan may include an interagency agreement as permitted under section 21 of chapter 19 of the General Laws.

The departments shall jointly file a report on the plan with the clerks of the senate and house of representatives, who shall forward the report to the house and senate chairs of the joint committee on mental health and substance abuse, the house and senate chairs of the joint committee on children, families and persons with disabilities, the house and senate chairs of the joint committee on health care financing, the chair of the senate committee on ways and means and the chair of the house committee on ways and means, not later than December 31, 2015.

SECTION 28. 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, and shall file the first such report not later than 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 under 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 clients and services; (4) the number of staff hired to deliver, manage and administer the services; (5) challenges encountered and met in serving new clients; (6) challenges that continue and those that are foreseen in the near future; (7) additional costs incurred in serving these clients; and (8) savings if any realized.

SECTION 29. The commission on autism, established under section 217 of chapter 6 of the General Laws, shall investigate and study the higher education opportunities, employment

training opportunities and employment opportunities available to persons with autism spectrum disorder and shall make recommendations in regard thereto. The commission shall determine the current status of such higher education opportunities, employment training opportunities and employment opportunities including, but not limited to, vocational training programs for teen-aged and young adult persons with autism spectrum disorder and shall make recommendations for providing appropriate higher education, employment training and employment opportunities for the population of residents in the commonwealth who have been diagnosed with autism spectrum disorder. Additionally, the commission shall review the rise in the prevalence of autism spectrum disorder diagnoses among children in the past 30 years and shall make estimates of the number of children, aged 21 or younger, with autism spectrum disorder who will become adults in the coming decades and the resulting need for employment training and employment opportunities for those individuals and shall recommend a plan-of-action for the commonwealth in regard thereto. The commission shall file its report with the clerks of the senate and house of representatives and the chairs of the joint committee on children, families and persons with disabilities on or before June 30, 2015.

SECTION 30. The commission on autism, established under section 217 of chapter 6 of the General Laws, shall make an investigation and study of the present, and anticipated future, statewide affordable supportive housing needs for the commonwealth's population of persons with autism spectrum disorder. The commission shall develop and conduct a statewide housing survey to determine the current status of affordable supportive housing stock for adults with autism spectrum disorder and shall make recommendations in regard thereto. Additionally, the commission shall review the rise in the prevalence of autism spectrum disorder diagnoses among children in the past 30 years and shall make estimates of the number of children, aged 21 or younger, with autism spectrum disorder who will become adults in the coming decades and the resulting need for affordable supportive housing for those individuals and shall recommend a plan-of-action for the commonwealth in regard thereto. The commission shall file its report with the clerks of the senate and house of representatives and the chairs of the joint committee on children, families and persons with disabilities on or before June 30, 2015.

SECTION 31. 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 knowledge, skills and competencies necessary to receive such endorsement, subject to regulations promulgated by the board of elementary and secondary education.

SECTION 32. The board of elementary and secondary education shall promulgate the regulations required pursuant to section 24 on or before June 30, 2015.

SECTION 33. (a) The executive director of the commission on autism, appointed under section 217 of chapter 6 of the General Laws, shall: request the United States Social Security Administration to revise its rules and regulations so that ABLE accounts, as described in section

2, shall not be considered to be a countable resource of the beneficiary of the ABLE account for the purposes of the Supplemental Security Income program; request the Office of Medicaid, to revise its rules and regulations so that ABLE accounts, as described in section 2, shall not be considered to be a countable resource of the beneficiary of the ABLE account for the purposes of the MassHealth program; provided that the Office of Medicaid may seek a waiver so that ABLE accounts shall not be considered a countable resource; and seek any other exemptions or waivers, which shall be necessary to ensure that beneficiaries do not lose their benefits under the Supplemental Security Income program as a result of assets contained in an ABLE account.

(b) Upon determining that beneficiaries of an ABLE account, as described in section 2, will not lose their benefits under the Supplemental Security Income and MassHealth programs as a result of assets contained in an ABLE account, the executive director shall file a report with the clerks of the house of representatives and the senate certifying such determination.

SECTION 34. Sections 2 and 21 shall take effect upon the filing of the report by the executive director of the commission on autism under subsection (b) of section 33."