

SENATE No. 2411

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

SENATE, Thursday, April 12, 2018

The committee on Children, Families and Persons with Disabilities, to whom was referred the petition (accompanied by bill, Senate, No. 69) of Patrick M. O'Connor, Richard J. Ross, Donald F. Humason, Jr., Ryan C. Fattman and other members of the General Court for legislation to increase the safety of disabled individuals living in group homes,- reports the accompanying bill (Senate, No. 2411).

For the committee,
Joan B. Lovely

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An Act to increase the safety of disabled individuals living in group homes.

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. The General Laws of 2014, as so appearing, is amended by inserting the
2 following new chapter:

3 CHAPTER 19E. DISABILITY ABUSE REGISTRY

4 Section 1. Definitions

5 When used in this chapter, unless the context otherwise requires, the following terms
6 shall have the following meanings:

7 "Abuse", the action or inaction that inflicts injury, unreasonable confinement,
8 intimidation, or punishment on an adult person with a disability. In instances of abuse of an adult
9 with a disability who is unable to express or demonstrate physical harm, pain, or mental anguish,
10 the abuse is presumed to cause physical harm, pain, or mental anguish. "Abuse" includes sexual
11 abuse, mental abuse, physical abuse, personal exploitation and financial exploitation of an adult
12 with a disability and which have the following meanings:

13 1. "Sexual abuse", any form of nonconsensual sexual conduct, including but not limited
14 to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit
15 photographing, and sexual harassment.

16 2. "Physical abuse", the action of inflicting bodily injury or physical mistreatment.
17 Physical abuse includes, but is not limited to, striking with or without an object, slapping,
18 pinching, choking, kicking, shoving, or prodding.

19 3. "Mental abuse", a verbal or nonverbal action that threatens, humiliates, harasses,
20 coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental
21 abuse may include ridiculing, yelling, or swearing.

22 4. "Personal exploitation", an act of forcing, compelling, or exerting undue influence over
23 an adult with a disability causing the individual to act in a way that is inconsistent with relevant
24 past behavior, or causing the vulnerable adult to perform services for the benefit of another.

25 5. "Financial exploitation", the illegal or improper use, control over, or withholding of the
26 property, income, resources, or trust funds of the vulnerable adult by any person or entity for any
27 person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage.

28 "Caretaker", any person volunteering or employed by a service provider, as licensed or
29 contracted with by any department of the executive office of health and human services, who
30 provides services or supports to an individual with a disability.

31 "Commission", the disabled persons protection commission.

32 "Department", any department within the executive office of health and human services.

33 "EOHHS", the executive office of health and human services.

34 “Executive Director” the executive director of the disabled persons protection
35 commission.

36 “Secretary”, the secretary of the executive office of health and human services.

37 “Neglect”, the failure to provide or permit treatment or services, including sufficient
38 food, clothing, maintenance, medical care or a clean and proper home.

39 “Registry,” the disability abuse registry.

40 “Service provider”, any organization licensed by any department within EOHHS or those
41 facilities or programs licensed, contracted or regulated by any department within EOHHS
42 providing supports and services for individuals with disabilities or those providing community
43 based services with indirect state funding to persons with disabilities, including but not limited
44 to: facilities for individuals with disabilities, a rehabilitation facility; a group home; an adult
45 foster care home; a case management entity that provides services to people with disabilities; a
46 corporate guardian; shared living placement services, a day habilitation center; a residential
47 service or habilitation service authorized to be reimbursed by MassHealth; any licensed or
48 MassHealth-certified entity or any program funded by any EOHHS department that provides
49 respite, companion or personal care services.

50 Section 2. Creation of the Disability Abuse Registry

51 EOHHS shall, subject to appropriation, establish and maintain a central computerized
52 registry of caretakers who have had a substantiated finding of abuse, neglect or exploitation of a
53 person with a disability issued by the commission and/or any agency within EOHHS that

54 receives and investigates complaints of abuse, neglect and exploitation. The registry will be
55 known as the disability abuse registry.

56 EOHHS shall adopt rules and regulations that define the procedure and standards for
57 inclusion of a caregiver with a substantiated complaint of abuse, neglect or exploitation on the
58 registry, notification of such inclusion to the caregiver and process for caregiver's right to appeal
59 the placement of his or her name on the registry. After notice to the caregiver of their right to
60 appeal the substantiated finding, the caregiver's name will be added to the registry.

61 Section 3. Use of the Disability Abuse Registry

62 Once a caregiver's name has been added to the registry, that person will be prohibited
63 from employment in facilities and programs licensed by departments within EOHHS or those
64 facilities or programs licensed, contracted or regulated by any department within EOHHS or
65 from providing community based services with indirect state funding to persons with disabilities.

66 All providers, prior to hiring an individual, must review the registry to determine whether
67 the individual's name is on the registry. No service provider shall hire an individual whose name
68 appears on the registry. All service providers must review the registry on a quarterly basis to
69 ensure current employees have not been placed on the registry.

70 Section 4. Employer Reporting Process

71 Upon the receipt of a complaint or allegation of abuse, neglect or exploitation of a person
72 with a disability, the caregiver or caregivers named in the complaint will automatically be placed
73 on administrative leave until the investigation is completed and a finding has been issued.

74 EOHHS and the Departments will ensure that the providers they license and contract with
75 comply with this rule.

76 Section 5. Penalties

77 EOHHS shall administer monetary sanctions not to exceed \$5,000 for a provider's failure
78 to check the registry prior to hiring that results in the hiring of a person on the registry.

79 Section 6. Public Disclosure

80 EOHHS shall keep information contained in the registry confidential and may only be
81 disclosed under circumstances expressly authorized by rules and regulations promulgated by
82 EOHHS consistent with the requirement that the service provider must have access to the
83 registry prior to hiring new employees and for ongoing evaluation of current employees
84 providing caregiver services to individuals with disabilities.

85 SECTION 2. Section 1 of Chapter 19C of the general laws, as so appearing, is amended
86 by striking the definition of "abuse" and replacing it with the following:

87 "Abuse", the action or inaction that inflicts injury, unreasonable confinement,
88 intimidation, or punishment on an adult person with a disability. In instances of abuse of an adult
89 with a disability who is unable to express or demonstrate physical harm, pain, or mental anguish,
90 the abuse is presumed to cause physical harm, pain, or mental anguish. "Abuse" includes sexual
91 abuse, mental abuse, physical abuse, personal exploitation and financial exploitation of an adult
92 with a disability and which have the following meanings:

93 1. "Sexual abuse", any form of nonconsensual sexual conduct, including but not limited
94 to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit
95 photographing, and sexual harassment.

96 2. "Physical abuse", the action of inflicting bodily injury or physical mistreatment.
97 Physical abuse includes, but is not limited to, striking with or without an object, slapping,
98 pinching, choking, kicking, shoving, or prodding.

99 3. "Mental abuse", a verbal or nonverbal action that threatens, humiliates, harasses,
100 coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental
101 abuse may include ridiculing, yelling, or swearing.

102 4. "Personal exploitation", an act of forcing, compelling, or exerting undue influence over
103 an adult with a disability causing the individual to act in a way that is inconsistent with relevant
104 past behavior, or causing the vulnerable adult to perform services for the benefit of another.

105 5. "Financial exploitation", the illegal or improper use, control over, or withholding of the
106 property, income, resources, or trust funds of the vulnerable adult by any person or entity for any
107 person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage.

108 SECTION 3. Section 5 of Chapter 19C of the general laws, as so appearing, is hereby
109 amended by inserting a new subsection after subsection 5:

110 (6) The executive director of the disabled persons protection commission must submit
111 substantiated investigations of abuse of a person with a disability with the caretaker's relevant
112 information immediately upon issuance to the executive office of health and human services.