

SENATE No. 2606

The Commonwealth of Massachusetts

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

SENATE, July 16, 2018

The committee on Ways and Means to whom was referred the Senate Bill to establish a registry of caretakers found to have substantiated abuse against persons with intellectual disability or developmental disability (Senate, No. 2213),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2606).

For the committee,
Karen E. Spilka

The Commonwealth of Massachusetts

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

An Act to establish a registry of caretakers found to have substantiated abuse against persons with intellectual disability or developmental disability.

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. Section 4H of chapter 7 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the fourth paragraph the following
3 paragraph:-

4 In accordance with section 14 of chapter 19C, a care provider against whom a
5 substantiated finding of registrable abuse has been made or whose appeal to have the care
6 provider's name removed from the registry of abusers of persons with intellectual or
7 developmental disabilities was denied shall be entitled to appeal a final decision of the disabled
8 persons protection commission at a hearing before the division.

9 SECTION 2. Chapter 19C of the General Laws is hereby amended by adding the
10 following section:-

11 Section 14. (a) As used in this section the following words shall have the following
12 meanings, unless the context requires otherwise:-

13 “Care provider”, a person who is employed by, or contracts with, the department or an
14 employer to provide services or supports to a person with an intellectual or developmental
15 disability.

16 “Department”, the department of developmental services.

17 “Employer”, an entity that provides services or treatment to persons with intellectual or
18 developmental disabilities, pursuant to: (i) a contract or agreement with the department; (ii)
19 funding administered by the department; or (iii) a license under section 15 or 15A of chapter
20 19B.

21 “Registry”, the registry of abusers of persons with intellectual or developmental
22 disabilities.

23 “Registrable abuse”, an act or omission of a care provider that results in serious physical
24 injury or serious emotional injury, or constitutes abuse per se, of a person with an intellectual or
25 developmental disability; provided, however, that “registrable abuse” shall not include instances
26 in which the commission determines that, based on the nature of the act or omission, the care
27 provider is not likely to pose a serious risk of abuse to a person with an intellectual or
28 developmental disability.

29 (b) The commission shall, subject to appropriation, establish and maintain a registry of
30 care providers against whom the commission has made a substantiated finding of registrable
31 abuse.

32 (c) If, after notice and a hearing before the commission, the commission substantiates a
33 finding of registrable abuse, the commission shall include the care provider’s name on the

34 registry; provided, however, that the commission shall provide notification to the care provider
35 of the care provider's right to appeal a final decision of the commission to the division of
36 administrative law appeals pursuant to section 4H of chapter 7 and of the care provider's right to
37 petition for the removal of the care provider's name from the registry pursuant to subsection (g);
38 provided further, that if the care provider appeals the commission's final decision to the division
39 of administrative law appeals, the commission shall not enter the care provider's name on the
40 registry unless the division affirms the commission's final decision. The commission shall notify
41 the department and the last known employer of the care provider of the placement on the
42 registry.

43 (d) Prior to employing, or contracting with, a person as a care provider, the department or
44 an employer shall determine whether the person's name appears on the registry. Neither the
45 department nor an employer shall hire, utilize the services of or employ a person whose name
46 appears on the registry.

47 If an employer fails to meet the requirements of this subsection, the commission may: (i)
48 impose a monetary fine of not more than \$5,000; (ii) revoke or downgrade a license maintained
49 by the employer; (iii) require forfeiture of a state contract; or (iv) impose a combination of such
50 fine, license revocation or downgrade or state contract forfeiture.

51 (e) The information maintained in the registry, including the record of its proceedings,
52 shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or chapter 66.
53 The commission, the division of administrative law appeals and the department shall keep
54 information contained in the registry confidential and shall not disseminate information about a

55 care provider to anyone other than said care provider unless it is necessary for the consideration
56 of a current or prospective care provider or as provided by law.

57 (f) Annually, the commission shall initiate an audit of the registry to ensure compliance
58 with this section, including that all substantiated findings of registrable abuse were added to the
59 registry and proper notification was made to the department and employers. A summary of the
60 audit shall be filed not later than December 31 of each year with the clerks of the senate and
61 house of representatives, the senate and house committees on ways and means and the joint
62 committee on children, families and persons with disabilities. The summary shall include, but not
63 be limited to: (i) the number of people on the registry; (ii) the number of people who were added
64 to the registry in the last calendar year; (iii) the number of substantiated findings of registrable
65 abuse that were appealed in the last calendar year; (iv) the number of substantiated findings of
66 registrable abuse that were overturned on appeal in the last calendar year; (v) the number of
67 requests made by employers for information from the registry in the last calendar year and the
68 number of such requests that were granted; (vi) the total number of instances in the last calendar
69 year in which the commission failed to notify the department or the last known employer of a
70 care provider who was placed on the registry and the reasons for such failures; and (vii) the
71 number of employers found to have failed to meet the requirements of subsection (d) in the last
72 calendar year. Information contained in the summary shall be in a de-identified and aggregate
73 form.

74 (g) A person whose name appears on the registry may petition the commission to have
75 the person's name removed from the registry; provided, however, that such a petition shall not be
76 considered until 5 years after the placement of the person's name on the registry or 5 years after

77 the conclusion of any prior petition for the removal of the person's name from the registry,
78 whichever is later.

79 (h) The commission shall adopt regulations to implement this section.

80 SECTION 3. Section 9B of chapter 30 of the General Laws, as appearing in the 2016
81 Official Edition, is hereby amended by striking out, in line 32, the words "thirty-one or chapter
82 one hundred and fifty E" and inserting in place thereof the following words:-

83 "31 or chapter 150E or a hearing under section 4H of chapter 7 related to a care
84 provider's placement on the registry of abusers of persons with intellectual or developmental
85 disabilities established under section 14 of chapter 19C".

86 SECTION 4. Notwithstanding any general or special law to the contrary, section 14 of
87 chapter 19C of the General Laws shall apply to all substantiated findings of registrable abuse
88 made by the disabled persons protection commission on or after January 1, 2020, regardless of
89 when such registrable abuse took place.

90 SECTION 5. This act shall take effect on January 1, 2020.