

SENATE No. 69

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick M. O'Connor

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/25/2017</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	<i>1/30/2017</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	<i>1/31/2017</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	<i>2/2/2017</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>2/3/2017</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>7/31/2017</i>

SENATE No. 69

By Mr. O'Connor, a 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. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

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

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. Chapter 19 of the General Laws, as so appears, is amended by inserting the
2 following new chapter

3 19E. Disability Abuse Registry

4 Section 1. Definitions

5 The following words as used in this chapter shall have the following meanings:

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

(a) "Sexual abuse" means any form of nonconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment.

(b) "Physical abuse" means the action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

(c) "Mental abuse" means a verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

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

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

"Caretaker" any person volunteering or employed by a service provider, as licensed or contracted with by any department of the Executive Office of Health and Human Services, who provides services or supports to an individual with a disability

"Commission," Disabled persons protection commission

“Department”, any Department within the Executive Office of Health and Human Services

“EOHHS, Executive Office of Health and Human Services

“Executive Director” Executive Director of the Disabled persons protection commission

“Secretary”, Secretary of the Executive Office of Health and Human Services

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

“Registry,” the disability abuse registry

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

SECTION 2. Creation of Disability Abuse Registry.

EOHHS shall establish and maintain a central computerized registry of caretaker who have had a substantiated finding of abuse, neglect or exploitation of a person with a disability

issued by the commission and/or any agency within EOHHS that receives and investigates complaints of abuse, neglect and exploitation. The registry will be known as the disability abuse registry.

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

SECTION 3. Use of Registry.

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

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

SECTION 4. Reporting Process.

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

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

SECTION 5. Penalties.

EOHHS shall administer monetary sanctions not to exceed five thousand dollars for a provider's failure to check the registry prior to hiring that results in the hiring of a person on the registry.

SECTION 6. Public Disclosure.

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

SECTION 7. Section 1 of Chapter 19C of the general laws, as so appears, is amended by deleting the definition of "abuse" and replacing it with the following:

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

(a) "Sexual abuse" means any form of nonconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment.

(b) "Physical abuse" means the action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

(c) "Mental abuse" means a verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

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

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

SECTION 8. Section 5 of Chapter 19C of the general laws, as so appearing, is hereby amended by inserting a new subsection after subsection 5:

114 (6) The executive director must submit substantiated investigations of abuse of a person
115 with a disability with the caregiver's relevant information immediately upon issuance to
116 EOHHS.