

HOUSE No. 119

The Commonwealth of Massachusetts

PRESENTED BY:

Colleen M. Garry

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 relative to enhancing public transparency to support quality care outcomes in all child serving organizations.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|--------------------------|-----------------------|------------------|
| <i>Colleen M. Garry</i> | <i>36th Middlesex</i> | <i>1/18/2019</i> |
| <i>David Paul Linsky</i> | <i>5th Middlesex</i> | <i>1/29/2019</i> |
| <i>Kenneth I. Gordon</i> | <i>21st Middlesex</i> | <i>1/29/2019</i> |

HOUSE No. 119

By Miss Garry of Dracut, a petition (accompanied by bill, House, No. 119) of Colleen M. Garry, David Paul Linsky and Kenneth I. Gordon for legislation to further regulate public transparency in child serving organizations. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to enhancing public transparency to support quality care outcomes in all child serving organizations.

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 22N of chapter 7 of the General Laws is hereby amended by adding
2 after the ninth paragraph the following paragraph: -

3 “The bureau shall annually provide notice to all governmental units, including school
4 committees, who are purchasers of special education programs pursuant to chapter 71B of the
5 availability and location of Uniform Financial Statement and Independent Auditor’s Reports
6 (UFR) as defined in regulation by the division that have been completed and submitted to said
7 division in accordance with 808 CMR 1.04.”

8 SECTION 2. Section 55A of chapter 15 of the General Laws is hereby amended after the
9 fifth paragraph by adding the following five paragraphs: -

10 “The office shall make said reviews, findings, recommendations, methods for improving
11 any deficiencies identified by the office and any required corrective action plans available on the
12 department’s website.”

13 “The office shall promulgate regulations, subject to chapter 30A, to determine a process
14 to make available on the department’s website e annual restraint data in the aggregate,
15 information in the aggregate on the number and rate of restraints and injuries related to restraints
16 for schools, charter schools and school districts, including regional school districts, and make
17 this information available in the aggregate for each school, provided that the office shall
18 adequately describe the nature of the student population and any associated behaviors for the
19 student population served in relation to the number of reported restraints, and provided further
20 that the office shall calculate the school’s annual rate of restraints and related injuries based on
21 the schools’ total annual hours of operation multiplied by the total annual student attendance
22 divided by the total annual number of restraints, and provided further that the office shall
23 determine the school’s annual aggregate rate of restraint reduction and provided further that the
24 information required in this paragraph complies with state and federal child and student privacy
25 laws, including the provisions of 20 U.S.C. 1232g and 34 CFR Part 99. Nothing in this section
26 shall be determined to supersede any regulations and policies of the department relating to the
27 privacy of a child.

28 The office shall promulgate regulations, subject to chapter 30A, to determine a process to
29 annually make available on its website the aggregate number of critical incident investigation
30 reports, in the aggregate, and for each program, documenting serious incidents as determined by
31 the department where the health and safety of a child was determined to be at risk, and provided
32 further that the office shall determine the annual rate of critical incidents in which the health and

safety of a child was determined to be at risk based on the school's total annual hours of operation multiplied by the total annual student attendance divided by the total annual number of incident reports documenting serious incidents as determined by the department where the health and safety of a child was determined to be at risk.

The office shall promulgate regulations, subject to chapter 30A, to determine a process to annually make available on its website the annual number of substantiated reports in the aggregate and the annual number and rate of said reports for each facility filed in accordance with section 51A of Chapter 119 of the General Laws and substantiated reports filed in accordance with Chapter 19C against the program and or its employees, including the annual number and rate of such substantiated reports resulting in hospitalization, death, and or criminal charges of which the defendants were found guilty, provided that the rate of said reports shall be calculated for each facility by multiplying the total annual hours of operation by the total annual facility attendance divided by the total annual number of reports; and provided further that said information shall also include the annual number and rate of substantiated reports that were self-reported by a facility and or its staff, provided that the rate of said reports shall be calculated for each facility by multiplying the total annual hours of operation by the total annual facility attendance divided by the total annual number of reports.

The annual number of substantiated reports in the aggregate and the annual number and rate of said reports for each facility filed in accordance with section 51A of Chapter 119 of the General Laws and such substantiated reports filed in accordance with Chapter 19C related to the use of restraints, provided that the rate of said reports shall be calculated for each facility by multiplying the total annual hours of operation by the total annual facility attendance divided by the total annual number of reports, and provided further that said information shall also include

the annual number of substantiated reports that were self-reported by a facility and or its staff, provided that the rate of said reports shall be calculated for each facility by multiplying the total annual hours of operation by the total annual facility attendance divided by the total annual number of reports. “Nothing in this section prevents schools, charter schools and school districts, including regional school districts, from appealing to the office regarding the accuracy of the information required to be made available by this section. In an event where the office is unwilling to make changes to the available information, a school, charter school, school district and regional school district shall have the right to include a clarifying statement in the area of the department’s website where said information is made available.”

“In promulgating regulations in accordance with this section, the office shall require the department to make the required information and data available in the aggregate and by school, charter school and school districts, including regional school districts. Reports for schools, charter schools and school districts, including regional school districts shall compare the program to other such schools according to: (a) the type of program (b) the age, sex and race of applicable student populations, (c) the type and number of students enrolled in a school, (d) the type of disabilities served by a school or program and the level of care required by said disabilities, (e) the number of days of service and the hours of service per day, in the aggregate by a school, charter school and school districts, including regional school districts; provided further that the department shall also ensure that said regulations comply with state and federal child and student privacy laws, including the provisions of 20 U.S.C. 1232g and 34 CFR Part 99. Nothing in this section shall be determined to supersede any regulations and policies of the department relating to the privacy of a child.

78 There shall be established in accordance with this section a commission established by
79 the office that shall (1) define the levels of care required by said disabilities as used in the
80 preceding paragraph, provided that the said levels of care are defined based on factors that
81 include a level of cognitive functioning and or any self-injurious, aggressive, assaultive or any
82 other behaviors that are unsafe or threaten the health and safety of a student, his or her peers,
83 teachers and school or program staff; and (2) provide recommendations relating to opportunities
84 for quality improvement by utilizing said information and data required to be made available in
85 accordance with this section, provided that said commission include the following: a
86 representative from the department; a parent of a school age child with a disability as defined by
87 section 1 of chapter 71B of the General Laws; and an administrator or staff member of a school,
88 charter school or school district, including a regional school district, responsible for making said
89 information to the department.

90 Provided further that the names of any teachers, staff members or other employees who
91 are named in a restraint report filed in accordance with the regulations shall be considered
92 exempt according to section 10B of Chapter 66 of the General Laws.

93 SECTION 3. Chapter 15D of the General Laws is hereby amended by adding after
94 section 7 the following section: -

95 Section 7A. Public information for licensed programs

96 a. The department shall promulgate regulations, subject to chapter 30A, to determine
97 a process to annually make available on its website information relating to the license and
98 approval of each department licensed and or funded program. This information shall include the

99 name and location of each program and the effective date of the license and or renewal of each
100 program and any related licensing reports.

101 b. The department shall promulgate regulations, subject to chapter 30A, to determine
102 a process to annually make available on its website the number of critical incident investigation
103 reports in the aggregate and for each program that documents serious incidents as determined by
104 the department where the health and safety of a child was determined to be at risk, and provided
105 further that the department shall determine the annual rate of critical incidents in which the
106 health and safety of a child was determined to be at risk based on the programs' total annual
107 hours of operation multiplied by the total annual program attendance divided by the total annual
108 number of critical incident reports

109 c. The department shall make available on its website annual restraint data in the
110 aggregate and for each program licensed, funded or approved by the department in the aggregate,
111 including information regarding the number and rate of restraints and injuries related to
112 restraints, provided that the department shall adequately describe the nature of the student
113 population and any associated behaviors for the student population served in relation to the
114 number of reported restraints for each program, and provided further that the office shall
115 calculate the program annual rate of restraint and related injuries based on the program's total
116 annual hours of operation multiplied by the total annual program attendance divided by the total
117 annual number of restraints, and provided further that the office shall determine the program's
118 annual aggregate rate of restraint reduction.

119 In promulgating regulations in accordance with this section, the department shall ensure
120 said regulations comply with state and federal child and student privacy laws, including the

provisions of 20 U.S.C. 1232g and 34 CFR Part 99. Nothing in this section shall be determined to supersede any regulations and policies of the department relating to the privacy of a child.

Nothing in this section prevents a licensed or funded program from appealing to the department regarding the accuracy of the information required to be made available by this section. In an event where the department is unwilling to make changes to the available information, a program shall have the right to include a clarifying statement in the area of the department's website where said information is made available.

In promulgating regulations in accordance with this section, the department shall make the required information and data available in the aggregate and by approved or licensed program type and by individual approved or licensed program. Reports for individual approved or licensed programs shall compare the program to other approved or licensed programs according to: (a) the type of program, day or residential or other program type (b) the age, sex and race of applicable client populations, (c) the type and number of children served by the program licensed, funded or approved by the department, (d) the type of disabilities served by a program and the level of care required by said disabilities, (e) the number of days of service and the hours of service per day, in the aggregate by a department licensed, funded program; provided further that the department shall also ensure that said regulations comply with state and federal child and student privacy laws, including the provisions of 20 U.S.C. 1232g and 34 CFR Part 99. Nothing in this section shall be determined to supersede any regulations and policies of the department relating to the privacy of a child.

There shall be established in accordance with this section a commission established by the department that shall (1) define the levels of care required by said disabilities as used in the

preceding paragraph, provided that the said levels of care are defined based on factors that include a level of cognitive functioning and or any self-injurious, aggressive, assaultive or any other behaviors that are unsafe or threaten the health and safety of a student, his or her peers, teachers and school or program staff; and (2) provide recommendations relating to opportunities for quality improvement by utilizing said information and data required to be made available in accordance with this section, provided that said commission include: a representative from the department; a parent of a school age child with a disability as defined by section 1 of chapter 71B of the General Laws; an administrator or staff member of a school licensed, funded or approved by the department responsible for making said information to the department.

Provided further that the names of any teachers, staff members or other employees who are named in a restraint report filed in accordance with the regulations shall be considered exempt according to section 10B of Chapter 66 of the General Laws.

SECTION 4. Section 1 of chapter 18A of the General Laws is hereby amended by inserting after the second paragraph the following paragraphs: -

“The department shall promulgate regulations, subject to chapter 30A, to determine a process to annually make available on its website the number of critical incident investigation reports in the aggregate and for each detention center as identified in section 5 of said chapter and any cities towns, public agencies and private nonprofit agencies funded by the department that documents serious incidents as determined by the department where the health and safety of a child or youth was determined to be at risk, and provided further that the department shall determine the annual rate of critical incidents in which the health and safety of a child or youth was determined to be at risk based on the detention center’s total annual hours of operation

multiplied by the total annual detention center attendance divided by the total annual number of critical incident reports.

“The department shall make available on its website annual restraint data in the aggregate and for each detention center as identified in section 5 of said chapter and any cities towns, public agencies and private nonprofit agencies funded by the department, including information regarding the number and rate of restraints and injuries related to restraints, provided that the department shall adequately describe the nature of the youth population and any associated behaviors for the youth population served in relation to the number of reported restraints for each funded program, and provided further that the department shall calculate the detention center’s annual rate of restraint and related injuries based on the detention center’s total annual hours of operation multiplied by the total annual detention center attendance divided by the total annual number of restraints.

“In promulgating regulations in accordance with this section, the department shall ensure said regulations comply with state and federal child and student privacy laws, including the provisions of 20 U.S.C. 1232g and 34 CFR Part 99 and the federal Health Insurance Portability and Accountability Act of 1996. Nothing in this section shall be determined to supersede any regulations and policies of the department relating to the privacy of a child.

“Nothing in this section prevents a detention center as identified in section 5 of said chapter and any cities towns, public agencies and private nonprofit agencies funded by the department from appealing to the department regarding the accuracy of the information required to be made available by this section. In an event where the department is unwilling to make changes to the available information, a detention center as identified in section 5 of said chapter

187 and any cities towns, public agencies and private nonprofit agencies funded by the department
188 shall have the right to include a clarifying statement in the area of the department's website
189 where said information is made available.

190 "In promulgating regulations in accordance with this section, the department shall make
191 the required information and data available in the aggregate and by each detention center as
192 identified in section 5 of said chapter and any cities towns, public agencies and private nonprofit
193 agencies funded by the department. Reports for each detention center as identified in section 5
194 of said chapter and any cities towns, public agencies and private nonprofit agencies funded by
195 the department shall compare each detention center as identified in section 5 of said chapter and
196 any cities towns, public agencies and private nonprofit agencies funded by the department
197 according to: (a) the type of program (b) the age, sex and race of applicable populations, (c) the
198 type and number of children and youth served by a said facility, (d) the population served by said
199 facility and the level of care required by said population, (e) the number of days of service and
200 the hours of service per day, in the aggregate; provided further that the department shall also
201 ensure that said regulations comply with state and federal child and student privacy laws,
202 including the provisions of 20 U.S.C. 1232g and 34 CFR Part 99. The process to make public
203 and available said information shall be determined in a manner to ensure patient privacy and to
204 comply with state and federal privacy laws, including the federal Health Insurance Portability
205 and Accountability Act of 1996.

206 "There shall be established in accordance with this section a commission established by
207 the department that shall (1) define the levels of care required by said population as used in the
208 preceding paragraph, provided that the said levels of care are defined based on factors that
209 include a level of cognitive functioning and or any self-injurious, aggressive, assaultive or any

210 other behaviors that are unsafe or threaten the health and safety of a an individual, his or her
211 peers, department and or program staff; and (2) provide recommendations relating to
212 opportunities for quality improvement by utilizing said information and data required to be made
213 available in accordance with this section, provided that said commission include one
214 representative from the department and one administrator or staff member of a private, county or
215 municipal facility or department or ward or any such facility licensed by the department.”

216 Provided further that the names of any teachers, staff members or other employees who
217 are named in a restraint report filed in accordance with the regulations shall be considered
218 exempt according to section 10B of Chapter 66 of the General Laws.

219 SECTION 5. Section 1 of chapter 18C of the General Laws is hereby amended by
220 inserting the following words with the following meanings: -

221 “Child”, any person under the age of 18 or under the age of 22 if that person is a child
222 with special needs.

223 “Child with special needs”, a child who, because of temporary or permanent disabilities
224 arising from intellectual, sensory, emotional, or environmental factors, or other specific learning
225 disabilities, is or would be unable to progress effectively in a regular school program.

226 SECTION 6. Section 5 of chapter 18C of the General Laws is hereby amended after
227 clause (h) by adding the following two clauses: -

228 (i) The child advocate with the executive office of education and the executive office
229 of health and human services shall promulgate regulations, subject to chapter 30A, to determine
230 a process to annually make available and public on a public website or public database the

following information for each state funded, approved or licensed program, including public schools, serving a child or a child with special needs under the jurisdiction of each respective executive agency, and provided further that said information be made available for private schools approved pursuant to section 1 of chapter 76 of the General Laws.

(1) The annual number of substantiated reports in the aggregate and the annual number and rate of said reports for each program filed in accordance with section 51A of Chapter 119 of the General Laws and any substantiated reports filed in accordance with section 15 of Chapter 19A and Chapter 19C against the program and or its employees, including the annual number and rate of said reports resulting in hospitalization, death, and or criminal charges of which the defendants were found guilty, provided that the annual rate of said reports shall be calculated for each program by multiplying the total annual hours of operation by the total annual program attendance divided by the total annual number of reports; and

(2) The annual number of substantiated reports in the aggregate and the annual number of said reports per e for each program filed in accordance with section 51A of Chapter 119 of the General Laws and such substantiated reports filed in accordance with Chapter 19C related to the use of restraints

The process to make public and available said information shall be determined in a manner that identifies the total annual number and rate of substantiated reports for each program, and the total annual number and rate of substantiated reports that were self-reported by a program and or its staff, provided that the annual rate of said reports shall be calculated for each program by multiplying the total annual hours of operation by the total annual program attendance divided by the total annual number of reports, and provided further that said process

will be determined in a manner to ensure child privacy and the privacy of individuals and clients and shall comply with the provisions of section 12 of chapter 18C of the General Laws and 20 U.S.C. 1232g and 34 CFR Part 99.

Nothing in this section prevents such a state funded, approved or licensed program from appealing to the department regarding the accuracy of the information required to be made available by this section. In an event where the department is unwilling to make changes to the available information, a program shall have the right to include a clarifying statement in the area of the department's website where said information is made available.

(j) The child advocate together with the executive office of education and the executive office of health and human services shall determine the feasibility of recommending proposed regulations or policies that establish a consistent definition of restraint to agencies within said secretariats that fund, license or approve child serving schools, programs or organizations within one year after the effective date of this act; and provided further that the child advocate together with said secretariats within one year after the effective date of this act also issue a report to the governor of the commonwealth, the clerks of the house of representatives and the senate, the chairs of the joint committee on education and the joint committee on children, families and persons with disabilities that details the feasibility of establishing a single online reporting system coordinated between agencies that allows for the reporting of restraints and critical incidents by child serving schools, programs or organizations within the commonwealth.

SECTION 7. Section 19 of chapter 19 of the General Laws is hereby amended by adding after clause (g) following clause: -

(h) As part of its licensing process, the department shall promulgate regulations, subject to chapter 30A, to determine a process to annually make available and public on a public website or public database the following information for any private, county or municipal facility or department or ward or any such facility licensed by the department serving any person under the age of 18 or under the age of 22 if that person is a child with special needs:

1.) Information relating to the license of each facility granted by the department. This information shall include the name and location of each program and the effective date of the license and or renewal of each program and any related licensing reports;

2.) The annual number of substantiated reports in the aggregate and the annual number and rate of said reports for each facility filed in accordance with section 51A of Chapter 119 of the General Laws and substantiated reports filed in accordance with Chapter 19C against the program and or its employees, including the annual number and rate of such substantiated reports resulting in hospitalization, death, and or criminal charges of which the defendants were found guilty, provided that the rate of said reports shall be calculated for each facility by multiplying the total annual hours of operation by the total annual facility attendance divided by the total annual number of reports; and provided further that said information shall also include the annual number and rate of substantiated reports that were self-reported by a facility and or its staff, provided that the rate of said reports shall be calculated for each facility by multiplying the total annual hours of operation by the total annual facility attendance divided by the total annual number of reports.

3.) The annual number of substantiated reports in the aggregate and the annual number and rate of said reports for each facility filed in accordance with section 51A of Chapter 119 of the General Laws and such substantiated reports filed in accordance with Chapter 19C related to the use of restraints, provided that the rate of said reports shall be calculated for each facility by multiplying the total annual hours of operation by the total annual facility attendance divided by the total annual number of reports, and provided further that said information shall also include the annual number of substantiated reports that were self-reported by a facility and or its staff, provided that the rate of said reports shall be calculated for each facility by multiplying the total annual hours of operation by the total annual facility attendance divided by the total annual number of reports; and

4.) Annual restraint data in the aggregate and for each program licensed or funded by the department in the aggregate, including information regarding the number and rate of restraints and injuries related to restraints, provided that the department shall adequately describe the nature of the patient population and any associated behaviors for the patient population served in relation to the number of reported restraints for each licensed facility and provided further that the department shall calculate the program's annual rate of restraint and related injuries based on the program's total annual hours of operation multiplied by the total annual program attendance divided by the total annual number of restraints, and provided further that the office shall determine the facility's annual aggregate rate of restraint reduction.

The department shall promulgate regulations, subject to chapter 30A, to determine a process to annually make available on its website the number of critical incident investigation reports in the aggregate and for each program that documenting serious incidents as determined by the department where the health and safety of an individual with disabilities was determined

to be at risk , and provided further that the department shall determine the annual rate of critical incidents in which the health and safety of each person under the age of 18 or under the age of 22 if that person is a child with special needs was determined to be at risk based on the program's total annual hours of operation multiplied by the total annual program attendance divided by the total annual number of incident reports documenting serious incidents as determined by the department.

The process to make public and available said information shall be determined in a manner to ensure patient privacy and to comply with state and federal privacy laws, including the federal Health Insurance Portability and Accountability Act of 1996.

Nothing in this section prevents such facility from appealing to the department regarding the accuracy of the information required to be made available by this section. In an event where the department is unwilling to make changes to the available information, a facility shall have the right to include a clarifying statement in the area of the department's website where said information is made available.

In promulgating regulations in accordance with this section, the department shall make the required information and data available in the aggregate and by private, county or municipal facility or department or ward or any such facility licensed by the department. Reports for said individual facilities shall compare the facility to other private, county or municipal facilities or department or wards or any other such facility licensed by the department according to: (a) the type of program (b) the age, sex and race of applicable populations, (c) the type and number of persons under the age of 18 or under the age of 22 if that person is a child with special needs served by said facility, (d) the population served by said facility and the level of care required by

said population, (e) the number of days of service and the hours of service per day, in the aggregate; provided further that the department shall also ensure that said regulations comply with state and federal child and student privacy laws, including the provisions of 20 U.S.C. 1232g and 34 CFR Part 99. The process to make public and available said information shall be determined in a manner to ensure patient privacy and to comply with state and federal privacy laws, including the federal Health Insurance Portability and Accountability Act of 1996.

There shall be established in accordance with this section a commission established by the department that shall (1) define the levels of care required by said population as used in the preceding paragraph, provided that the said levels of care are defined based on factors that include a level of cognitive functioning and or any self-injurious, aggressive, assaultive or any other behaviors that are unsafe or threaten the health and safety of an individual, his or her peers, department and or program staff; and (2) provide recommendations relating to opportunities for quality improvement by utilizing said information and data required to be made available in accordance with this section, provided that said commission include one representative from the department and one administrator or staff member of a private, county or municipal facility or department or ward or any such facility licensed by the department.

Provided further that the names of any teachers, staff members or other employees who are named in a restraint report filed in accordance with the regulations shall be considered exempt according to section 10B of Chapter 66 of the General Laws.

SECTION 8. Section 15 of chapter 19B of the General Laws is hereby amended by adding after clause (g) the following clause: -

(h) As part of its licensing process, department shall promulgate regulations, subject to chapter 30A, to determine a process to annually make available and public on a public website or public database the following information for any private, county or municipal facility or department or ward or any such facility licensed by the department serving any person under the age of 18 or under the age of 22 if that person is a child with special needs:

1.) Information relating to the license of each facility granted by the department. This information shall include the name and location of each program and the effective date of the license and or renewal of each program and any related licensing reports;

2.) The annual number of substantiated reports in the aggregate and the number and rate of said reports provided to each person under the age of 18 or under the age of 22 if that person is a child with special needs for each facility filed in accordance with section 51A of Chapter 119 of the General Laws and such substantiated reports filed in accordance with Chapter 19C against the program and or its employees, including the annual number and rate of such substantiated reports resulting in hospitalization, death, and or criminal charges of which the defendants were found guilty, provided further that said information shall also include the number and rate of substantiated reports that were self-reported by a facility and or its staff, provided that the rate of said reports shall be calculated for each program by multiplying the total annual hours of operation by the total annual program attendance divided by the total annual number of reports ;

3.) The annual number of substantiated reports in the aggregate and the number and rate of said reports for each facility filed in accordance with section 51A of Chapter 119 of the General Laws and substantiated reports filed in accordance with Chapter 19C related to the use

of restraints, provided further that said information shall also include the number and rate of substantiated reports that were self-reported by a facility and or its staff; provided that the rate of said reports shall be calculated for each program by multiplying the total annual hours of operation by the total annual program attendance divided by the total annual number of reports.

4.) Annual restraint data in the aggregate and for each facility in the aggregate, including information regarding the number and rate of restraints and injuries related to restraints, provided that the department shall adequately describe the nature of the patient population and any associated behaviors for the patient population served in relation to the number of reported restraints for each licensed facility, and provided further that the department shall calculate each facility's annual rate of restraint and related injuries based on the facility's total annual hours of operation multiplied by the total annual facility attendance divided by the total annual number of restraints, and provided further that the office shall determine the facility's annual aggregate rate of restraint reduction.

The department shall promulgate regulations, subject to chapter 30A, to determine a process to annually make available on its website the number of critical incident investigation reports in the aggregate and for each program that document serious incidents as determined by the department where the health and safety of an individual with disabilities was determined to be at risk. , and provided further that the department shall determine the annual rate of critical incidents in which the health and safety of an individual with disabilities was determined to be at risk based on the programs' total annual hours of operation multiplied by the total annual program attendance divided by the total annual number of critical incident reports.

405 The process to make public and available said information shall be determined in a
406 manner to ensure patient privacy and to comply with state and federal privacy laws, including the
407 federal Health Insurance Portability and Accountability Act of 1996.

408 Nothing in this section prevents such facility from appealing to the department regarding
409 the accuracy of the information required to be made available by this section. In an event where
410 the department is unwilling to make changes to the available information, a facility shall have the
411 right to include a clarifying statement in the area of the department's website where said
412 information is made available.

413 In promulgating regulations in accordance with this section, the department shall make
414 the required information and data available in the aggregate and by private, county or municipal
415 facility or department or ward or any such facility licensed by the department. Reports for said
416 individual facilities shall compare the facility to other private, county or municipal facilities or
417 department or wards or any other such facility licensed by the department according to: (a) the
418 type of program (b) the age, sex and race of applicable populations, (c) the type and number of
419 individuals with disabilities served by said facility, (d) the population served by said facility and
420 the level of care required by said population, (e) the number of days of service and the hours of
421 service per day, in the aggregate; provided further that the department shall also ensure that said
422 regulations comply with state and federal child and student privacy laws, including the
423 provisions of 20 U.S.C. 1232g and 34 CFR Part 99. The process to make public and available
424 said information shall be determined in a manner to ensure patient privacy and to comply with
425 state and federal privacy laws, including the federal Health Insurance Portability and
426 Accountability Act of 1996.

There shall be established in accordance with this section a commission established by the department that shall (1) define the levels of care required by said population as used in the preceding paragraph, provided that the said levels of care are defined based on factors that include a level of cognitive functioning and or any self-injurious, aggressive, assaultive or any other behaviors that are unsafe or threaten the health and safety of an individual, his or her peers, department and or program staff; and (2) provide recommendations relating to opportunities for quality improvement by utilizing said information and data required to be made available in accordance with this section, provided that said commission include one representative from the department and one administrator or staff member of a private, county or municipal facility or department or ward or any such facility licensed by the department.

Provided further that the names of any teachers, staff members or other employees who are named in a restraint report filed in accordance with the regulations shall be considered exempt according to section 10B of Chapter 66 of the General Laws.

SECTION 9. Section 15A of chapter 19B of the General Laws is hereby amended by adding after clause (f) the following clause: -

(g) As part of its licensing process, department shall promulgate regulations, subject to chapter 30A, to determine a process to annually make available and public on a public website or public database the following information for any private, county or municipal facility or department or ward or any such facility licensed by the department serving any person under the age of 18 or under the age of 22 if that person is a child with special needs:

1.) Information relating to the license of each facility granted by the department. This information shall include the name and location of each program and the effective date of the license and or renewal of each program and any related licensing reports;

2.) The annual number of substantiated reports in the aggregate and the number and rate of said reports for each facility filed in accordance with section 51A of Chapter 119 of the General Laws and such substantiated reports filed in accordance with Chapter 19C against the program and or its employees, including the annual number and rate of such substantiated reports resulting in hospitalization, death, and or criminal charges of which the defendants were found guilty, provided further that said information shall also include the number and rate of substantiated reports that were self-reported by a facility and or its staff, provided that the rate of said reports shall be calculated for each facility by multiplying the total annual hours of operation by the total annual facility attendance divided by the total annual number of reports.

3.) The annual number of substantiated reports in the aggregate and the number and rate of said reports for each program filed in accordance with section 51A of Chapter 119 of the General Laws and such substantiated reports filed in accordance with Chapter 19C related to the use of restraints, provided further that said information shall also include the number and rate of substantiated reports that were self-reported by a facility and or its staff, provided that the rate of said reports shall be calculated for each program by multiplying the total annual hours of operation by the total annual program attendance divided by the total annual number of reports

4.) Annual restraint data in the aggregate and for each program licensed, funded by the department in the aggregate, including information regarding the number and rate of restraints and injuries related to restraints, provided that the department shall adequately

469 describe the nature of the patient population and any associated behaviors for the patient
470 population served in relation to the number of reported restraints for each licensed facility, and
471 provided further that the department shall calculate each program's annual rate of restraints and
472 injuries based on the program's total annual hours of operation multiplied by the total annual
473 facility attendance divided by the total annual number of restraints, and provided further that the
474 office shall determine the program's annual aggregate rate of restraint reduction.

475 The department shall promulgate regulations, subject to chapter 30A, to determine a
476 process to annually make available on its website the number of critical incident investigation
477 reports in the aggregate and the number and rate of critical incident investigation reports for each
478 program documenting serious incidents as determined by the department where the health and
479 safety of an individual with disabilities was determined to be at risk, and provided further that
480 the department shall determine the annual rate of critical incidents in which the health and safety
481 of an individual with disabilities was determined to be at risk based on the programs' total
482 annual hours of operation multiplied by the total annual program attendance divided by the total
483 annual number of incident reports.

484 The process to make public and available said information shall be determined in a
485 manner to ensure patient privacy and to comply with state and federal privacy laws, including the
486 federal Health Insurance Portability and Accountability Act of 1996.

487 Nothing in this section prevents such facility from appealing to the department regarding
488 the accuracy of the information required to be made available by this section. In an event where
489 the department is unwilling to make changes to the available information, a facility shall have the

right to include a clarifying statement in the area of the department's website where said information is made available.

In promulgating regulations in accordance with this section, the department shall make the required information and data available in the aggregate and by private, county or municipal facility or department or ward or any such facility licensed by the department. Reports for said individual facilities shall compare the facility to other private, county or municipal facilities or department or wards or any other such facility licensed by the department according to: (a) the type of program (b) the age, sex and race of applicable populations, (c) the type and size of a said facility, (d) the population served by said facility and the level of care required by said population, (e) the number of days of service and the hours of service per day, in the aggregate; provided further that the department shall also ensure that said regulations comply with state and federal child and student privacy laws, including the provisions of 20 U.S.C. 1232g and 34 CFR Part 99. The process to make public and available said information shall be determined in a manner to ensure patient privacy and to comply with state and federal privacy laws, including the federal Health Insurance Portability and Accountability Act of 1996.

There shall be established in accordance with this section a commission established by the department that shall (1) define the levels of care required by said population as used in the preceding paragraph, provided that the said levels of care are defined based on factors that include a level of cognitive functioning and or any self-injurious, aggressive, assaultive or any other behaviors that are unsafe or threaten the health and safety of an individual, his or her peers, department and or program staff; and (2) provide recommendations relating to opportunities for quality improvement by utilizing said information and data required to be made available in accordance with this section, provided that said commission include one representative from the

513 department and one administrator or staff member of a private, county or municipal facility or
514 department or ward or any such facility licensed by the department.

515 Provided further that the names of any teachers, staff members or other employees who
516 are named in a restraint report filed in accordance with the regulations shall be considered
517 exempt according to section 10B of Chapter 66 of the General Laws.

518 SECTION 10. Section 4E of chapter 40 of the General Laws is hereby amended by
519 adding at the end of clause (k) the following:

520 “The department shall make said reviews available on its website and any related
521 corrective action plan and additional information relative to said reviews available on its
522 website.”

523 SECTION 11. Section 4E of chapter 40 of the General Laws is hereby amended by
524 adding at the end of clause (m) the following clause: -

525 (n) The department shall promulgate regulations, subject to chapter 30A, to determine a
526 process to make available on the department’s website annual restraint data for collaborative
527 programs in the aggregate, including information regarding the number and rate of restraints and
528 injuries related to restraints, provided that the department will make this information available in
529 the aggregate for each collaborative program, and provided further that the department shall
530 calculate the collaborative’s annual rate of restraint and related injuries based on the
531 collaborative’s total annual hours of operation multiplied by the total annual student attendance
532 divided by the total annual number of restraints, and provided further that the office shall
533 determine the collaborative’s annual aggregate rate of restraint reduction, and provided further
534 that the department shall adequately describe the nature of the student population and any

535 associated behaviors for the student population served in relation to the number of reported
536 restraints. The department shall ensure said regulations comply with state and federal child and
537 student privacy laws, including the provisions of 20 U.S.C. 1232g and 34 CFR Part 99. Nothing
538 in this section shall be determined to supersede any regulations and policies of the department
539 relating to the privacy of a child.

540 The department shall promulgate regulations, subject to chapter 30A, to determine a
541 process to annually make available on its website the aggregate number and rate of critical
542 incident investigation reports, in the aggregate and for each program, documenting serious
543 incidents as determined by the department where the health and safety of a student was
544 determined to be at risk, and provided further that the department shall determine the annual rate
545 of critical incidents based on the school's total annual hours of operation multiplied by the total
546 annual student attendance divided by the total annual number of critical incident reports

547 The office shall promulgate regulations, subject to chapter 30A, to determine a process to
548 annually make available on its website the annual number of substantiated reports in the
549 aggregate and the annual number and rate of said reports for each collaborative filed in
550 accordance with section 51A of Chapter 119 of the General Laws and substantiated reports filed
551 in accordance with Chapter 19C against the collaborative and or its employees, including the
552 annual number and rate of such substantiated reports resulting in hospitalization, death, and or
553 criminal charges of which the defendants were found guilty, provided that the rate of said reports
554 shall be calculated for each collaborative by multiplying the total annual hours of operation by
555 the total annual student attendance divided by the total annual number of reports; and provided
556 further that said information shall also include the annual number and rate of substantiated
557 reports that were self-reported by a collaborative and or its staff, provided that the rate of said

reports shall be calculated for each collaborative by multiplying the total annual hours of operation by the total annual student attendance divided by the total annual number of reports.

The annual number of substantiated reports in the aggregate and the annual number and rate of said reports for each collaborative filed in accordance with section 51A of Chapter 119 of the General Laws and such substantiated reports filed in accordance with Chapter 19C related to the use of restraints, provided that the rate of said reports shall be calculated for each collaborative by multiplying the total annual hours of operation by the total annual student attendance divided by the total annual number of reports, and provided further that said information shall also include the annual number of substantiated reports that were self-reported by a collaborative and or its staff, provided that the rate of said reports shall be calculated for each collaborative by multiplying the total annual hours of operation by the total annual facility attendance divided by the total annual number of reports.

Nothing in this section prevents a collaborative program from appealing to the department regarding the accuracy of the information required to be made available by this section. In an event where the department is unwilling to make changes to the available information, a program shall have the right to include a clarifying statement in the area of the department's website where said information is made available.

In promulgating regulations in accordance with this section, the department shall make the required information and data available in the aggregate and by individual collaborative program. Reports for individual collaborative programs shall compare the program to other said programs according to: (a) the type of program (b) the age, sex and race of applicable student populations, (c) the type and size of student enrollment of such programs, (d) the type of

disabilities served by a said program and the level of care required by said disabilities, (e) the number of days of service and the hours of service per day, in the aggregate by a collaborative program; provided further that the department shall also ensure that said regulations comply with state and federal child and student privacy laws, including the provisions of 20 U.S.C. 1232g and 34 CFR Part 99. Nothing in this section shall be determined to supersede any regulations and policies of the department relating to the privacy of a child.

There shall be established in accordance with this section a commission established by the department that shall (1) define the levels of care required by said population as used in the preceding paragraph, provided that the said levels of care are defined based on factors that include a level of cognitive functioning and or any self-injurious, aggressive, assaultive or any other behaviors that are unsafe or threaten the health and safety of an individual, his or her peers, department and or program staff; and (2) provide recommendations relating to opportunities for quality improvement by utilizing said information and data required to be made available in accordance with this section, provided that said commission include one representative from the following: a representative from the department; a parent of a school age child with a disability as defined by section 1 of chapter 71B of the General Laws; and an administrator or staff member of a collaborative program responsible for making said information to the department.

Provided further that the names of any teachers, staff members or other employees who are named in a restraint report filed in accordance with the regulations shall be considered exempt according to section 10B of Chapter 66 of the General Laws.

SECTION 12. Section 1B of Chapter 69 of the General Laws is hereby amended by inserting after the seventh paragraph the following paragraph: -

602 “The board shall annually publish a supplemental report containing student achievement
603 data for each approved private special education school or program and collaborative program,
604 provided that such data shall include student performance on the statewide assessment system
605 approved by the board under section 11, and provided further that the board shall include in said
606 report (1) data from the department of elementary and secondary education for each school or
607 program regarding the nature of the student disability population served and the relationship of
608 the disability to test score performance; and (2) information regarding school or program size
609 and student mobility rates for each program along with cautionary language and explanations to
610 allow parents and the public a means of understanding if the achievement data has any real
611 comparative value in comparing schools and or programs or from year to year. The board in
612 publishing said report shall exclude: (1) achievement data from schools with a number of
613 students that the board has determined does not meet the minimum number of students sufficient
614 to yield reliable data in accordance with 34 CFR 200.7(2)(i); and (2) achievement data from a
615 student of an approved private special education school or program or collaborative program
616 who has been enrolled in said school or program for less than a year in accordance with 34 CFR
617 200.20(d)(2)(3)(1) and (2). The board shall also include information on other student outcome
618 measures such as rates for student graduation, suspensions, expulsions and drop-outs as are
619 currently reported by the department of elementary and secondary education in the Individuals
620 with Disabilities Education Act (IDEA) Part B Annual Performance Plan.”

621 Nothing in this section prevents such schools or programs from appealing to the
622 department regarding the accuracy of the information required to be made available by this
623 section. In an event where the department is unwilling to make changes to the available

information, said schools and programs shall have the right to include a clarifying statement in the area of the department's website where said information is made available.

SECTION 13. Section 1B of chapter 69 of the General Laws is hereby amended by adding after the twenty-fifth paragraph the following paragraphs: -

“In establishing the policies deemed necessary to fulfill the purposes of chapter seventy-one B, the board shall require the department of elementary and secondary education to make public on its website information relating to the approval or reapproval of private day and residential special education school programs. This information shall include the name and location of each program and the effective date of the approval or reapproval reports, provided further that said policies shall also require the publishing of annual restraint data in the aggregate and for each program, including information, in the aggregate and for each program, regarding the number of injuries related to restraints, provided that the board shall adequately describe the nature of the student population and any associated behaviors for the student population served in relation to the number of reported restraints, and provided further that such information complies with state and federal child and student privacy laws, including the provisions of 20 U.S.C. 1232g and 34 CFR Part 99. Nothing in this paragraph shall be determined to supersede any regulations and policies of the department relating to the privacy of a child. The board shall promulgate regulations, subject to chapter 30A, to determine a process to annually make available on its website the aggregate number of critical incident reports, in the aggregate and for each program, documenting serious incidents as determined by the department where the health and safety of a child was determined to be at risk.

645 “Nothing in this section prevents such private day and residential special education
646 school programs from appealing to the department regarding the accuracy of the information
647 required to be made available by this section. In an event where the department is unwilling to
648 make changes to the available information, said private day and residential special education
649 school programs shall have the right to include a clarifying statement in the area of the
650 department’s website where said information is made available.

651 “In promulgating regulations in accordance with this section, the board shall require the
652 department to make the required information and data available in the aggregate and by approved
653 or licensed program type and by individual approved or licensed program. Reports for
654 individual approved or licensed programs shall compare the program to other approved or
655 licensed programs according to: (a) the type of program, day or residential or other program type
656 (b) the age, sex and race of applicable student populations, (c) the type and size of the student
657 enrollment of a school or program licensed, funded or approved by the department, (d) the type
658 of disabilities served by a school or program and the level of care required by said disabilities,
659 (e) the number of days of service and the hours of service per day, in the aggregate by a
660 department licensed, funded or approved school or program; provided further that the department
661 shall also ensure that said regulations comply with state and federal child and student privacy
662 laws, including the provisions of 20 U.S.C. 1232g and 34 CFR Part 99. Nothing in this section
663 shall be determined to supersede any regulations and policies of the department relating to the
664 privacy of a child.

665 “There shall be established in accordance with this section a commission established by
666 the department that shall (1) define the levels of care required by said disabilities as used in the
667 preceding paragraph, provided that the said levels of care are defined based on factors that

include a level of cognitive functioning and or any self-injurious, aggressive, assaultive or any other behaviors that are unsafe or threaten the health and safety of a student, his or her peers, teachers and school or program staff; and (2) to provide recommendations relating to opportunities for quality improvement by utilizing said information and data required to be made available in accordance with this section, provided that said commission include one representative from the following: a representative from the department; a parent of a school age child with a disability as defined by section 1 of chapter 71B of the General Laws; and an administrator or staff member of a school licensed, funded or approved by the department responsible for making said information to the department.”

Provided further that the names of any teachers, staff members or other employees who are named in a restraint report filed in accordance with the regulations shall be considered exempt according to section 10B of Chapter 66 of the General Laws.

SECTION 14. Chapter 111 of the General Laws is hereby amended by adding after section 1 the following section: -

Section 1A. Public information for certain licensed programs

As part of its licensing process, department shall promulgate regulations, subject to chapter 30A, to determine a process to annually make available and public on a public website or public database the following information for each health care facility defined by section 25B and each facility defined by section 51H licensed by the department serving any person under the age of 18 or under the age of 22 if that person is a child with special needs:

1.) Information relating to the license of each health care facility and facility granted by the department. This information shall include the name and location of each program and the

690 effective date of the license and or renewal of each program and any related licensing reports;
691 and

692 2.) Annual restraint data in the aggregate and for each facility in the aggregate,
693 including information regarding the number and rate of restraints and injuries related to
694 restraints, provided that the department shall adequately describe the nature of the patient
695 population and any associated behaviors for the patient population served in relation to the
696 number of reported restraints for each licensed facility, and provided further that the department
697 shall calculate each facility's annual rate of restraint and related injuries based on the facility's
698 total annual hours of operation multiplied by the total annual facility attendance divided by the
699 total annual number of restraints, and provided further that the office shall determine the
700 facility's annual aggregate rate of restraint reduction.

701 3.) The annual number of substantiated reports in the aggregate and the annual
702 number and rate of said reports for each health care facility and facility filed in accordance with
703 section 51A of Chapter 119 of the General Laws and substantiated reports filed in accordance
704 with section 15 of chapter 19A and Chapter 19C against the program and or its employees,
705 relating to any use of restraints, including the annual number and rate of such substantiated
706 reports resulting in hospitalization, death, and or criminal charges of which the defendants were
707 found guilty, provided that said information shall also include the number of substantiated
708 reports that were self-reported by a facility and or its staff, provided that the rate of said reports
709 shall be calculated for each facility by multiplying the total annual hours of operation by the total
710 annual facility attendance divided by the total annual number of reports.

4.) The aggregate number and rate of critical incident investigation reports, in the aggregate and for each program, documenting serious incidents as determined by the department where the health and safety of a person under the age of 18 or under the age of 22 if that person is a child with special needs was determined to be at risk, and provided further that the department shall determine the rate of critical incidents by multiplying the total annual hours of operation by the total annual facility attendance divided by the total annual number of reports.

The process to make public and available said information shall be determined in a manner to ensure patient privacy and to comply with state and federal privacy laws, including the federal Health Insurance Portability and Accountability Act of 1996.

Nothing in this section prevents such health care facilities and facilities from appealing to the department regarding the accuracy of the information required to be made available by this section. In an event where the department is unwilling to make changes to the available information, said health care facilities and facilities shall have the right to include a clarifying statement in the area of the department's website where said information is made available.

SECTION 15. Section 2 of Chapter 123 is hereby amended by adding at the end of the first paragraph the following paragraphs: -

"The department shall promulgate regulations, subject to chapter 30A, to determine a process to annually make available and public on a public website or public database the following information for any private, county or municipal facility or department or ward or any such facility licensed by the department serving any person under the age of 18 or under the age of 22 if that person is a child with special needs (1) information relating name and location of each department facility; (2) the annual number of substantiated reports in the aggregate and the

number and rate of said reports for each facility filed in accordance with section 51A of Chapter 119 of the General Laws and substantiated reports filed in accordance with section 15 of Chapter 19A and Chapter 19C against the program and or its employees, including the annual number and rate of such substantiated reports resulting in hospitalization, death, and or criminal charges of which the defendants were found guilty; (3) the annual number and rate of substantiated reports in the aggregate and the number of said reports filed in accordance with section 51A of Chapter 119 of the General Laws and substantiated reports filed in accordance with section 15 of Chapter 19A and Chapter 19C related to the use of restraints; and (4) annual restraint data in the aggregate and for each department facility, including regarding the number and rate of restraints and injuries related to restraints, provided that said information shall also include the number and rate of substantiated reports that were self-reported by a facility and or its staff, provided that the rate of all said reports required by this section shall be calculated for each facility by multiplying the total annual hours of operation by the total annual facility attendance divided by the total annual number of reports; and that the annual aggregate rate of restraint reduction shall be determined for each facility; and (5) the aggregate number of critical incident investigation reports, in the aggregate and for each program, documenting serious incidents as determined by the department where the health and safety of a person under the age of 18 or under the age of 22 if that person is a child with special needs was determined to be at risk, and provided further that the department shall determine the rate of critical incidents in which the health and safety of a person under the age of 18 or under the age of 22 if that person is a child with special needs was determined to be at risk by multiplying the total annual hours of operation by the total annual facility attendance divided by the total annual number of reports.

. The department shall adequately describe the nature of the patient population and any associated behaviors for the patient population served in relation to the number of reported restraints for each facility. The process to make public and available said information shall be determined in a manner to ensure patient privacy and to comply with state and federal privacy laws, including the federal Health Insurance Portability and Accountability Act of 1996.

“Nothing in this section prevents such facilities from appealing to the department regarding the accuracy of the information required to be made available by this section. In an event where the department is unwilling to make changes to the available information, said facilities shall have the right to include a clarifying statement in the area of the department’s website where said information is made available.

“In promulgating regulations in accordance with this section, the department shall make the required information and data available in the aggregate and by private, county or municipal facility or department or ward or any such facility licensed by the department. Reports for said individual facilities shall compare the facility to other private, county or municipal facilities or department or wards or any other such facility licensed by the department according to: (a) the type of program (b) the age, sex and race of applicable populations, (c) the type and number of the patient population served by said facility, (d) the population served by said facility and the level of care required by said population, (e) the number of days of service and the hours of service per day, in the aggregate; provided further that the department shall also ensure that said regulations comply with state and federal child and student privacy laws, including the provisions of 20 U.S.C. 1232g and 34 CFR Part 99. The process to make public and available said information shall be determined in a manner to ensure patient privacy and to comply with

777 state and federal privacy laws, including the federal Health Insurance Portability and
778 Accountability Act of 1996.

779 “There shall be established in accordance with this section a commission established by
780 the department that shall (1) define the levels of care required by said population as used in the
781 preceding paragraph, provided that the said levels of care are defined based on factors that
782 include a level of cognitive functioning and or any self-injurious, aggressive, assaultive or any
783 other behaviors that are unsafe or threaten the health and safety of an individual, his or her peers,
784 department and or program staff; and (2) to provide recommendations relating to opportunities
785 for quality improvement by utilizing said information and data required to be made available in
786 accordance with this section, provided that said commission include one representative from the
787 department and one administrator or staff member of a private, county or municipal facility or
788 department or ward or any such facility licensed by the department.”

789 Provided further that the names of any teachers, staff members or other employees who
790 are named in a restraint report filed in accordance with the regulations shall be considered
791 exempt according to section 10B of Chapter 66 of the General Laws.

792 SECTION 16. Notwithstanding any general or special law to the contrary, the office of
793 the child advocate, the executive office of education, and the executive office of health and
794 human services, together with the respective departments of said agencies, shall, by January 1,
795 2020, determine a process to utilize information included but not limited to that required to be
796 made available by this act together with the respective licensed, funded and or approved
797 programs and facilities and administrators and staff of each office and or department to develop
798 quality improvement professional learning communities within each office and or department,

799 provided that said professional learning communities shall develop practices and policies to
800 periodically review the system wide information required to be made public and available by this
801 act, and provided further that such professional learning communities shall seek to advance
802 professional development and program quality and improvement for the purpose of enhancing
803 outcomes to improve the care and treatment of children, students, individuals, and individuals
804 with disabilities in each applicable state funded, licensed or approved program or facility related
805 to this act.