HOUSE DOCKET, NO. 1066 FILED ON: 1/15/2019

HOUSE . . . . . No. 125

The Commonwealth of Massachusetts

PRESENTED BY:

Danielle W. Gregoire

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 establishing an independent office of quality assurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Danielle W. Gregoire	*4th Middlesex*	*1/15/2019*

HOUSE DOCKET, NO. 1066 FILED ON: 1/15/2019

HOUSE . . . . . No. 125

By Miss Gregoire of Marlborough, a petition (accompanied by bill, House, No. 125) of Danielle W. Gregoire relative to establishing an independent office of quality assurance for persons with developmental disabilities. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

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

An Act establishing an independent office of quality assurance.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

WHEREAS, A stronger system of monitoring and quality assurance is required on the state level for individuals with developmental disabilities.

WHEREAS, The function of oversight, monitoring and quality assurance should be independent of the agency providing the services,

SECTION 1. The General Laws are hereby amended by adding after chapter 19D, the following chapter:—

Chapter 19E.

Office of Quality Assurance for Developmentally Disabled Persons.

Section 1. The following words as used in this chapter shall, unless the context otherwise requires, have the following meanings:

"Office", the independent office of quality assurance for persons with developmental disabilities.

"Department" the department of developmental services.

"Commissioner", the commissioner of the department of developmental services.

"Director", the director of the independent office of quality assurance for persons with developmental disabilities.

"Person with developmental disabilities", a person who, as a result of inadequately developed or impaired intelligence, as determined by clinical authorities as described in the regulations of the department of developmental services is substantially limited in his ability to learn or adapt, as judged by established standards available for the evaluation of a person's ability to function in the community; or a person who is otherwise eligible for department of developmental services. A person with developmental disabilities may be considered mentally ill provided that no person with developmental disabilities shall be considered mentally ill solely by virtue of developmental disabilities

"Board of Directors", the directors of the office of quality assurance for developmental disabilities.

Section 2. Establishment of an Independent Office of Quality Assurance for Developmentally Disabled Persons.

In order to protect the rights of developmentally disabled persons and to assure accountability of all service providers, there shall be established an Independent Office of Quality Assurance, hereinafter referred to as the office.

There shall be a Director to act as administrative head of the office. S/he shall be appointed by majority vote of the state auditor, the governor, and the attorney general.

The person selected shall have experience in the delivery of services to the developmentally disabled, be conversant with policies, statutes, rules and regulations related to developmental disabilities currently in force and possess a background in civil and administrative law. The Director shall be assisted by adequate staff and a board of directors.

The Director, pursuant to the provisions of chapter 30A shall make and, from time to time, revise such regulations as may be necessary to carry out the functions set forth in this chapter.

Assistants and staff for the Independent Office of Quality Assurance shall be established via the transfer of all currently authorized positions and budget in the Department of Developmental Services engaged in “internal” self-evaluation, monitoring, quality assurance and human rights functions. The current budget and staff of the Governor’s Commission of Intellectual Disability will also be transferred to the office. Not less than 80 full time equivalent positions shall comprise the office.

Section 3. Functions

Said office shall be independent of all agencies within the executive office of health and human services. Said office shall be responsible for monitoring all elements of service provision for the developmentally disabled described by statutes, rules and regulations, plus all federal entitlements in which the commonwealth participates.

Subject to approval by the board of directors, the director of the office may lease, purchase, hold and dispose of personal and real property facilitating execution of his duties.

The director may require by summons, the production of all records, reports, audits, reviews, papers, books, documents, recommendations, correspondence and any other data and material relevant to any matter under audit or investigation regarding service provision to a developmentally disabled person. All records of the department, disabled persons protection commission and the department of public health division of healthcare quality shall be accessible to the office.

Subject to the approval of said board, the director may apply for and accept, on behalf of the Commonwealth any federal, local or private grants, bequests, gifts or contributions to aid in the financing of any of the programs or policies of the office, provided such acceptance does not conflict with the independence of the office.

Such funds shall be received by the state treasurer on behalf of the Commonwealth and deposited in a separate account and shall be expended under the direction of the director to accomplish the mandates of the office. Federal funds paid as reimbursement shall be deposited in the General Fund.

The office may make agreements with other departments and agencies of the Commonwealth and may contract with other persons, including private agencies, to carry out any of the functions and purposes under this chapter. The director shall establish standards and procedures governing such agreements and contracts subject to the approval of the state auditor, the governor and the attorney general.

The director may appoint such assistants and staff deemed necessary to perform adequate monitoring of agency and contractor groups serving developmentally disabled persons with special emphasis on the development of individual service plans and effective implementation of these plans to each service recipient.

The director, the office and any person they may designate shall have access at any and all reasonable times to any facility, residence, program, or part thereof for the developmentally disabled, and to all relevant records, reports, materials, and employees, in order to allow them to monitor the quality with which such needs are being met. Such authority can be used to establish a program of citizen monitors.

Section 4. Responsibilities.

The office shall be responsible for the development of a fixed schedule and random method of monitoring the effectiveness and quality of all service providers including facility and community programs.

In order to carry out its mission of assuring a continued high level of care and to execute its responsibility as set forth, the office shall establish its own procedures and mechanisms for monitoring and evaluating the care of developmentally disabled persons, and shall undertake the following: receive information, reports and complaints from employees, developmentally disabled persons, their families or representatives and others regarding effectiveness and adequacy of quality assurance mechanisms; report all cases of abuse, mistreatment and neglect coming to the attention of the office in the normal course of its duties to the disabled persons protection commission; identify areas where agencies are failing to comply with and enforce applicable federal and state laws, regulations, standards and policies and require that those

agencies take action to correct inadequacies; investigations and reviews in order to draw independent conclusions relative to the adequacy of care, the protection of individuals' rights, the functioning of human rights committees, and the effectiveness of quality assurance mechanisms, with specific attention to issues of the safety and security of developmentally disabled persons; and subsequently require correction or resolution of problems. A report of the findings of any such activity shall be provided to the head of the appropriate agency, as well as his or her designated manager responsible for such service, and if problems are identified, such designated manager shall make a written report within a suitable time frame as requested by the director, but not more than ten working days, of actions taken to correct each problem; identify and report on areas where agencies and service providers are demonstrating superior efforts in the provision of services to developmentally disabled persons.

In addition, the office may: receive information and complaints from developmentally disabled persons, their families or representatives and others regarding the adequacy of care and services to these citizens; determine whether those individuals have made full use of existing procedures for obtaining services, or otherwise addressing their concerns; and if they have not, fully inform them of the appropriate mechanisms within the agency for doing so, and if they have sought but not obtained relief from those mechanisms, or if existing mechanisms are inadequate to resolve the problem, recommend or, if determined necessary by the director, mandate means of resolution; shall receive, upon request from any agency of the state and any private service provider assistance, information and data that will enable the office to fulfill its functions, powers and duties.

The director shall report in writing, at least annually, and as deemed necessary to secure corrective action, to the three appointment authorities. The report shall include: narrative and

statistical degree of compliance to ISP driven needs or developmentally disabled persons; identification of agencies and/or contractor service providers deemed chronically deficient or poorly administered; recommendations that would improve efficiency and cost effectiveness in the service delivery system.

The director shall issue special reports as needed on issues or conditions in the course of the office's oversight function.

The director office staff and the board shall have ready access for purposes of scheduled auditing, random sampling, and when responding to specific complaints, to any and all public and private facilities and programs contracting to serve developmentally disabled persons, whether licensed or unlicensed.

The office shall conduct ongoing monitoring of compliance with regulations governing the care of developmentally disabled persons; requesting and receiving status reports on the progress toward completion of outstanding corrective action plans; death reports, class member identification lists, reports of facility admissions, transfers and outplacements shall be provided to the office by the department; maintaining contact with federal oversight agencies to identify areas of concern where the Commonwealth has not complied with federal standards and to ensure that the appropriate state agencies devise means for implementing compliance, to assure continued entitlement; receive copies of compliance reviews conducted by the Health Care Financing Administration.

Section 5. Resources.

Adequate resources will be made available to fund the office in accordance with the staffing recommendations included herein. The director shall, in accordance with state

regulations, select the staff of the office, define staff responsibilities and establish appropriate compensation levels for all employees.

The salary of the director shall not exceed the salary grade of the Commissioner developmental disabilities.

Section 6. Board of Directors.

There shall be established a board of directors to the office. Said board shall advise and assist the office in seeking accountability from the providers of service and care to developmentally disabled persons.

The board of directors shall consist of fifteen members and shall be constituted as follows: one representative from the Coalition of Families and Advocates for the Retarded, Inc. (COFAR); one representative from Arc Massachusetts, Inc.; one representative from the Advocacy Network; one representative of each of the five DDS Regional Citizen Advisory Boards; 5 citizen representatives selected from among professional associations in the fields of medicine, nursing, psychology, social work and special education; the secretary of the executive office of health and human services or his/her designee; the executive director of the disabled persons protection commission.

The board of directors shall meet at least monthly with the director, and at other times as the director deems necessary and shall assist the director in planning and reviewing the activities of the office; recommend to the director for his/her consideration, issues that need to be pursued; at the director's request, review such additional reports and materials that would enable the office to more effectively evaluate the care of developmentally disabled persons; bring issues to the attention of the office that either aid in its evaluation of the quality of care to

developmentally disabled persons or warrant its intervention, as the director deems necessary and appropriate, accompany office staff on visits to selected program locations; and serve as a vehicle for communication between the Commonwealth's citizenry and the office.

The director shall, in accordance with the office's budget, make available to the board of directors secretarial support and supplies, and reimbursement at reasonable expense, to enable the board of directors to carry out its functions and duties.

Section 7. Evaluation.

Four years after the establishment of the office, an independent evaluation, under contract with the State Auditor's Office, shall be conducted to determine the effectiveness of the office and recommend appropriate actions such as continuance or other options as may be warranted to include but not be limited to a merging of the office with the disabled persons protection commission and/or a broadening of scope to include mentally ill persons and/or other disabled populations.