

HOUSE No. 4296

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, January 15, 2020.

The committee on Ways and Means, to whom was referred the Senate Bill to protect persons with intellectual or developmental disability from abuse (Senate, No. 2367, amended), reports recommending that the same ought to pass with amendments striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4296; and by striking out the title and inserting in place thereof the following title: “An Act to protect persons with intellectual or developmental disabilities from abuse”.

For the committee,

AARON MICHLEWITZ.

HOUSE No. 4296

Text of amendments, recommended by the committee on Ways and Means, to the Senate Bill to protect persons with intellectual or developmental disability from abuse (Senate, No. 2367, amended). January 15, 2020

The Commonwealth of Massachusetts

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

By striking out all after the enacting clause and inserting in place thereof the following:—

1 “SECTION 1. Section 4H of chapter 7 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by inserting after the fourth paragraph the following
3 paragraph:—

4 In accordance with section 15 of chapter 19C, a care provider against whom a
5 substantiated finding of registrable abuse has been made by the disabled persons protection
6 commission or whose appeal to have the care provider’s name removed from the registry
7 established under subsection (b) of said section 15 of said chapter 19C was denied may appeal
8 the final decision of the disabled persons protection commission at a hearing before the division.

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

11 Section 15. (a) As used in this section, the following words shall, unless the context
12 clearly requires otherwise, have the following meanings:

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

16 ‘Department’, the department of developmental services.

17 ‘Division’, the division of administrative law appeals established in section 4H of chapter
18 7.

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

23 ‘Registry’, the registry established under subsection (b).

24 ‘Registrable abuse’, an act or omission of a care provider that results in serious physical
25 or emotional injury or constitutes abuse per se of a person with an intellectual or developmental
26 disability; provided, however, that registrable abuse shall not include instances in which the
27 commission, upon weighing the conduct of the care provider and its outcome, determines that the
28 incident was isolated and unlikely to reoccur and that the care provider is fit to provide services
29 or supports to persons with intellectual or developmental disabilities.

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

33 (c) If, after the notice and opportunity to respond provided pursuant to paragraph (5) of
34 section 5, the commission makes a substantiated finding of registrable abuse, which shall
35 constitute the commission's final decision, the commission shall include the care provider's
36 name and date of birth on the registry; provided, however, that the commission shall provide
37 notification to the care provider of the care provider's right to appeal a final decision of the
38 commission to the division pursuant to section 4H of chapter 7 and of the care provider's right to
39 petition for the removal of the care provider's name from the registry pursuant to subsection (g);
40 provided further, that if the care provider appeals the commission's final decision to the division
41 within 10 business days of such notice, the commission shall not enter the care provider's name
42 on the registry unless the division affirms the commission's final decision by finding that the
43 commission has established registrable abuse by the care provider, based on a preponderance of
44 the evidence. The decision issued by the division may be subject to further judicial review under
45 section 14 of chapter 30A.

46 The commission shall notify the department, the last known employer of the care
47 provider, the victim of the abuse and their guardian, if applicable, of any substantiated finding of
48 registrable abuse, any appeal challenging such a determination, any petition filed to remove the
49 care provider's name from the registry pursuant to subsection (g), any petition filed for judicial
50 review and the disposition of such appeal or petition.

51 For the purposes of this subsection, the commission shall provide notice to the care
52 provider pursuant to said paragraph (5) of said section 5 by certified mail, return receipt
53 requested and by separate first-class mail sent to the care provider's last known address. The
54 certified mail notice shall be sufficient, even if unclaimed or refused by the care provider, if the
55 first-class mail notice is not returned to the sender undelivered. No additional service shall be

56 required if notice was sent by mail in accordance with this subsection. In individual cases, if
57 service by mail has not been accomplished, the commission may provide for any other means of
58 service that is necessary and effective.

59 (d) Prior to employing or contracting with a care provider, the department or an employer
60 shall determine whether the person's name and date of birth appear on the registry. Neither the
61 department nor an employer shall hire, utilize the services of or employ a person whose name
62 and date of birth appear on the registry. The department or an employer shall have the
63 prospective care provider's or current care provider's signed consent before making any inquiry
64 to the registry. The department or an employer shall not hire or retain any prospective or current
65 care provider who declines to provide such consent. At the time the department or an employer
66 decides not to hire or retain a person whose name and date of birth appear on the registry, the
67 department or employer shall so inform the person and shall provide the person with the contact
68 information for the commission.

69 If an employer fails to comply with this subsection, the commission may: (i) impose a
70 monetary fine of not more than \$5,000; (ii) recommend the revocation or downgrade of a license
71 maintained by the employer; (iii) recommend the forfeiture of a state contract; or (iv) impose a
72 combination of such fine, recommendation of license revocation or downgrade or
73 recommendation of state contract forfeiture.

74 (e) The information maintained in the registry, including the record of its proceedings,
75 shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or chapter 66.
76 Except as provided in subsection (c), the commission, the division and the department shall keep
77 information contained in the registry confidential and shall not disseminate information about a

78 care provider to anyone other than the care provider unless the dissemination is necessary for the
79 consideration of the department or an employer when reviewing current or prospective
80 employment of a care provider or is otherwise provided by law. Disclosure of information
81 contained in the registry shall be made in compliance with regulations promulgated pursuant to
82 subsection (h). The regulations shall include, but not be limited to, measures that are necessary to
83 protect the confidentiality of victims, individuals listed on the registry and third parties related to
84 registrable abuse.

85 (f) Annually, the commission shall perform an audit of the registry to ensure compliance
86 with this section, including that the commission added all substantiated findings of registrable
87 abuse to the registry and made proper notification to the department, employers and care
88 providers. A summary of the audit shall be filed not later than October 31 of each year with the
89 clerks of the house of representatives and senate, the house and senate committees on ways and
90 means and the joint committee on children, families and persons with disabilities. The summary
91 shall include, but not be limited to: (i) the number of substantiated findings of abuse found or not
92 found to have been registrable; (ii) the number of people on the registry; (iii) the number of
93 people who were added to the registry in the last fiscal year; (iv) the number of substantiated
94 findings of registrable abuse that were appealed in the last fiscal year; (v) the number of
95 substantiated findings of registrable abuse that were overturned on appeal in the last fiscal year;
96 (vi) the number of requests made by employers for information from the registry and the number
97 of such requests that were granted in the last fiscal year; (vii) the total number of instances in the
98 last fiscal year in which the commission failed to notify the department or the last known
99 employer of a care provider who was placed on the registry and the reasons for such failures; and
100 (viii) the number of employers found to have failed to meet the requirements of subsection (d) in

101 the last fiscal year. The information contained in the summary shall be in a de-identified and
102 aggregate form.

103 (g) A person whose name appears on the registry may petition the commission to have
104 the person's name removed from the registry; provided, however, that such a petition shall not be
105 considered until 5 years after the placement of the person's name on the registry or 5 years after
106 the conclusion of any prior petition for the removal of the person's name from the registry,
107 whichever is later. Upon the receipt of a timely-filed petition, the commission shall remove a
108 person's name from the registry, if the commission determines that the person whose name
109 appears on the registry has established by a preponderance of the evidence, considering the
110 totality of the circumstances, that it is no longer in the interest of persons with intellectual or
111 developmental disabilities and no longer in the public interest to exclude the registered person
112 from working as a care provider.

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

114 SECTION 3. Section 9B of chapter 30 of the General Laws, as appearing in the 2018
115 Official Edition, is hereby amended by striking out, in line 32, the words "thirty-one or chapter
116 one hundred and fifty E" and inserting in place thereof the following words:- 31, chapter 150E or
117 a hearing under section 4H of chapter 7 related to a care provider's placement on the registry
118 established under section 15 of chapter 19C.

119 SECTION 4. Notwithstanding any general or special law to the contrary, section 15 of
120 chapter 19C of the General Laws shall apply to all substantiated findings of registrable abuse
121 made by the disabled persons protection commission on or after January 31, 2021, regardless of
122 when such registrable abuse took place.

123 SECTION 5. Notwithstanding subsection (f) of section 15 of chapter 19C, the first audit
124 required under said subsection (f) of said section 15 of said chapter 19C shall be due not later
125 than December 31, 2021.

126 SECTION 6. This act shall take effect on January 31, 2021.”; and by striking out the title
127 and inserting in place thereof the following title: “An Act to protect persons with intellectual or
128 developmental disabilities from abuse.”.