

HOUSE No. 4074

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, September 18, 2019.

The committee on Children, Families and Persons with Disabilities to whom were referred the petition (accompanied by bill, House, No. 101) of Linda Dean Campbell and others for legislation to protect persons with intellectual or developmental disabilities from abuse, and the petition (accompanied by bill, House, No. 127) of Richard M. Haggerty, Jerald A. Parisella and Jonathan Hecht establishing a registry of caretakers found to have substantiated abuse against persons with intellectual disability or developmental disability, reports recommending that the accompanying bill (House, No. 4074) ought to pass.

For the committee,

KAY KHAN.

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

An Act to protect persons with intellectual or developmental disability from abuse.

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

1 SECTION 1. Section 4H of chapter 7 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the fourth paragraph the following
3 paragraph:-

4 In accordance with section 15 of chapter 19C, a care provider against whom a
5 substantiated finding of registrable abuse has been made or whose appeal to have the care
6 provider's name removed from the registry of abusers of persons with intellectual or
7 developmental disabilities was denied shall be entitled to appeal a final decision of the disabled
8 persons protection commission at a hearing before the division.

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

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

13 “Care provider”, a person who is employed by, or contracts with, the department or an
14 employer to provide services or supports to a person with an intellectual or developmental
15 disability. A care provider must also meet the definition of caretaker pursuant to section 1 of
16 chapter 19C.

17 “Department”, the department of developmental services.

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

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

24 “Registrable abuse”, an act or omission of a care provider that results in serious physical
25 injury or serious emotional injury, or constitutes abuse per se, of a person with an intellectual or
26 developmental disability; provided, however, that “registrable abuse” shall not include instances
27 in which the commission, upon weighing the conduct of the care provider and its outcome,
28 determines that the incident was isolated and unlikely to reoccur, and that the care provider is fit
29 to provide services 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 notice provided pursuant to section 5(5) of chapter 19C, the commission
34 maintains a finding of registrable abuse, the commission shall include the care provider's name
35 and date of birth on the registry; provided, however, that the commission shall provide
36 notification to the care provider of the care provider's right to appeal a final decision of the
37 commission to the division of administrative law appeals pursuant to section 4H of chapter 7 and
38 of the care provider's right to petition for the removal of the care provider's name from the
39 registry pursuant to subsection (g); provided further, that if the care provider appeals the
40 commission's final decision to the division of administrative law appeals within ten days of such
41 notice, the commission shall not enter the care provider's name on the registry unless the
42 division affirms the commission's final decision by finding that the commission has established
43 registrable abuse by the care provider, based on a preponderance of the evidence. The decision
44 issued by the division may be subject to further judicial review pursuant to section 14 of chapter
45 30A.

46 The commission shall notify the department, the last known employer of the care
47 provider, and the victim of the abuse, or their guardian if applicable, of any substantiated finding
48 of registrable abuse; any appeal challenging such a determination; any petition filed to remove a
49 name from the registry pursuant to section 15(g) of this chapter; or any petition filed for judicial
50 review; and the disposition of such appeal or petitions.

51 For the purposes of section 15(c) of this chapter, "written notice to the care provider" is
52 notice to be sent by certified mail, return receipt requested, and also by separate first-class mail
53 sent to the care provider's last known address to be identified during the investigation by the
54 commission. Such certified mail notice shall be sufficient, although unclaimed or refused by the
55 care provider, provided that the first-class mail notice is not returned to the sender undelivered.

56 No additional service shall be required for any reason if notice sent by mail, in accordance with
57 this section, appears to have been valid. In individual cases, if service by mail has not been
58 accomplished, the commission may provide for any other means of service or notice as is
59 deemed necessary and effective.

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

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

75 (e) The information maintained in the registry, including the record of its proceedings,
76 shall not be a public record under clause Twenty-sixth of section 7 of chapter 4, or chapter 66.
77 Except as provided in subsection (c), the commission, the division of administrative law appeals

78 and the department shall keep information contained in the registry confidential and shall not
79 disseminate information about a care provider to anyone other than said care provider unless it is
80 necessary for the consideration of the department or an employer when reviewing current or
81 prospective employment of a care provider or otherwise provided by law. All disclosures of
82 information contained in the registry must be made in compliance with regulations promulgated
83 by the commission. These regulations shall include measures determined necessary by the
84 commission to protect the confidentiality of victims, individuals listed on the registry, and third
85 parties related to registrable abuse.

86 (f) Annually, the commission shall initiate an audit of the registry to ensure compliance
87 with this section, including that all substantiated findings of registrable abuse were added to the
88 registry and proper notification was made to the department, employers, and care providers. A
89 summary of the audit shall be filed, not later than October 31 of each year beginning with
90 October 29, 2021, with the clerks of the senate and house of representatives, the senate and
91 house committees on ways and means and the joint committee on children, families and persons
92 with disabilities. The summary shall include, but not be limited to: (i) the number of
93 substantiated findings of abuse found or not found to have been registrable; (ii) the number of
94 people on the registry; (iii) the number of people who were added to the registry in the last fiscal
95 year; (iv) the number of substantiated findings of registrable abuse that were appealed in the last
96 fiscal year; (v) the number of substantiated findings of registrable abuse that were overturned on
97 appeal in the last fiscal year; (vi) the number of requests made by employers for information
98 from the registry in the last fiscal year and the number of such requests that were granted; (vii)
99 the total number of instances in the last fiscal year in which the commission failed to notify the
100 department or the last known employer of a care provider who was placed on the registry and the

101 reasons for such failures; and (viii) the number of employers found to have failed to meet the
102 requirements of subsection (d) in the last fiscal year. Information contained in the summary shall
103 be in a de-identified and aggregate form.

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

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

113 SECTION 3. Section 9B of chapter 30 of the General Laws, as appearing in the 2018
114 Official Edition, is hereby amended by striking out, in line 32, the words "thirty-one or chapter
115 one hundred and fifty E" and inserting in place thereof the following words:-

116 "31 or chapter 150E or a hearing under section 4H of chapter 7 related to a care
117 provider's placement on the registry of abusers of persons with intellectual or developmental
118 disabilities 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 November 2, 2020, regardless of
122 when such registrable abuse took place.

SECTION 5. This act shall take effect on November 2, 2020.