FILED ON: 10/11/2019

SENATE . . . . . No. 2367

The Commonwealth of Massachusetts

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:

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

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

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

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

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

"Department", the department of developmental services.

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

"Registry", the registry established under subsection (b).

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

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

(c) If, after notice provided pursuant to paragraph (5) of section 5 of chapter 19C, the commission maintains a finding of registrable abuse, the commission shall include the care provider's name and date of birth on the registry; provided, however, that the commission shall

provide notification to the care provider of the care provider's right to appeal a final decision of the commission to the division of administrative law appeals pursuant to section 4H of chapter 7 and of the care provider's right to petition for the removal of the care provider's name from the registry pursuant to subsection (g); provided further, that if the care provider appeals the commission's final decision to the division of administrative law appeals within 10 days of such notice, the commission shall not enter the care provider's name on the registry unless the division affirms the commission's final decision by finding that the commission has established registrable abuse by the care provider, based on a preponderance of the evidence. The decision issued by the division may be subject to further judicial review under section 14 of chapter 30A.

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

For the purposes of this subsection, the commission shall provide notice pursuant to said paragraph (5) of said section 5 by certified mail, return receipt requested and by separate first-class mail sent to the care provider's last known address. The certified mail notice shall be sufficient, even if unclaimed or refused by the care provider, if the first-class mail notice is not returned to the sender undelivered. No additional service shall be required if notice was sent by mail in accordance with this subsection. In individual cases, if service by mail has not been accomplished, the commission may provide for any other means of service that is necessary and effective.

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

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

(e) The information maintained in the registry, including the record of its proceedings, shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or chapter 66. Except as provided in subsection (c), the commission, the division of administrative law appeals and the department shall keep information contained in the registry confidential and shall not disseminate information about a care provider to anyone other than the care provider unless it is necessary for the consideration of the department or an employer when reviewing current or prospective employment of a care provider or is otherwise provided by law. Disclosure of information contained in the registry shall be made in compliance with regulations promulgated

pursuant to subsection (h). The regulations shall include, but not be limited to, measures that are necessary to protect the confidentiality of victims, individuals listed on the registry and third parties related to registrable abuse.

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

(g) A person whose name appears on the registry may petition the commission to have the person’s name removed from the registry; provided, however, that such a petition shall not be

considered until 5 years after the placement of the person's name on the registry or 5 years after the conclusion of any prior petition for the removal of the person's name from the registry, whichever is later. The person whose name appears on the registry shall establish by a preponderance of the evidence that, considering the totality of the circumstances, it is no longer in the interest of persons with intellectual and developmental disabilities and no longer in the public interest to exclude the registered abuser from working as a care provider.

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

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

"31, chapter 150E or a hearing under section 4H of chapter 7 related to a care provider's placement on the registry established under section 15 of chapter 19C".

SECTION 4. Notwithstanding any general or special law to the contrary, section 15 of chapter 19C of the General Laws shall apply to all substantiated findings of registrable abuse made by the disabled persons protection commission on or after November 2, 2020, regardless of when such registrable abuse took place.

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

SECTION 6. This act shall take effect on November 2, 2020.